

ATTACHMENT B

EPA's Notice of Proposed Rulemaking (NPRM) on SSOs Specific Requests for Public Comment

The following is a section-by-section summary of EPA's specific requests for public comment appearing in the preamble sections of the draft proposed rule. Page numbers and section headings have been included to help you track individual questions within the NPRM preamble. These page numbers correspond with the version of the NPRM on AMSA's website at <http://www.amsa-cleanwater.org>, posted on the *Member Pipeline*.

I. BACKGROUND

K. What are the Estimated Costs of Addressing Existing SSO Problems?

Categories with Incomplete Benefits Estimates

“EPA requests comments on data to support monetized estimates of benefits for:

- Basement backups: EPA only had data on clean up costs for damage from basement backups. ...
- "Systems benefits," or long-term savings in maintenance, repair and rehabilitation costs that collection systems will accrue as a result of the significant increase in maintenance spending projected as necessary to abate SSOs. EPA has estimated these benefits at \$120 million to \$638 million annually. EPA requests data from case studies and other sources that could support improved estimates of system benefits, or long-term savings in maintenance, repair and rehabilitation costs that collection systems will accrue as a result of the increase in maintenance spending projected as necessary to abate SSOs.
- The set of freshwater benefits estimated in the analysis accompanying today's proposal does not specifically account for the relative importance of SSOs as a source of pollution in urban areas. ... neither sufficient contingent valuation studies nor water quality data specific to urban and non-urban areas were available to adjust for this concern or to determine if such an adjustment would have a significant impact on benefits estimates.” (p. 57)

“EPA requests comment on the costs estimated in the draft SSO Needs Report (posted on AMSA's website) and the methodologies used to estimate them, and on the benefits identified in the draft report entitled Benefits of Measures to Abate SSOs (posted on AMSA's website), and the methodologies used to estimate them. EPA also requests any data that commenters could provide that would help refine these costs and benefit estimates, including data on the number and volume of SSOs annually, on the percentage of these SSOs that reach waters of the United States, and on rates of infiltration and inflow in sanitary sewers under various conditions and the effectiveness of measures to prevent infiltration and inflow. ... EPA also requests comment on several specific methodological issues related to the draft report entitled Benefits of Measures to Abate SSOs.”(p. 58)

“EPA requests comment on its estimates of wet and dry weather SSO flows and associated dilution factors, and on its methodology for estimating them. EPA also requests data on the volume and sewage

concentration of both wet and dry weather SSOs, and on the relationship of these flows to total sewage flow through the collection system.” (p. 60)

“To estimate the share of impairment attributable to municipal point sources (MPS) and urban runoff/storm sewers (UR/SS), EPA assumed in the upper bound that if one of these categories was listed as a major source, then 100 percent of the impairment should be attributed to that source (even if other major, moderate, and/or minor sources were listed), while if one of these sources was listed as a moderate source, then 30 percent of the impairment should be attributed to that source. No impairment was attributed if the source was listed only as a minor source. In the lower bound, EPA assumed that if a source was listed as major, 50 percent of impairment should be attributed to that source. No impairment was attributed if the source was listed as either moderate or minor. EPA requests comment on this methodology.” (p. 60)

M. What Key Terms Are Used in This Proposed Rule?

“The Agency requests comments on these definitions.

- (1) Combined Sewer.
- (2) Inflow.
- (3) Infiltration.
- (4) Municipality.
- (5) Rainfall-induced infiltration (RII)..
- (6) Regional collection system..
- (7) Sanitary sewer.
- (8) Sanitary Sewer Overflow (SSO).
- (9) Satellite collection system.” (p. 64-65)

II. OVERVIEW OF TODAY’S PROPOSAL

C. Definition of Sanitary Sewer Overflow

“The Agency requests comment on the technical difficulties in distinguishing between backups caused by building laterals and backups caused by flow conditions in the collector sewer.” (p. 69)

“Under today’s proposed definition, EPA does not intend for controlled management of flows that remain within the collection system, such as pumping wastewater into a tanker truck, or from one sewer to another to allow maintenance or repair activities, to be considered an SSO. The Agency requests comment on whether the proposed definition clearly excludes these situations, or whether such actions could be mistakenly considered a diversion and an SSO. The Agency requests specific examples of practices where such problems may arise.” (p. 69)

III. PROPOSED CAPACITY, MANAGEMENT, OPERATION AND MAINTENANCE

**(CMOM) STANDARD CONDITION FOR MUNICIPAL SANITARY SEWER
COLLECTION SYSTEMS**

F. What Performance Standards Would Be Required Under the Proposed CMOM Standard Permit Condition

“EPA is proposing use of the word "feasible" in describing the types of steps that must be taken as a way of limiting the response to a reasonable range of measures, within the practical capability of the permittee, resulting from the exercise of reasonable judgment in application of the overflow emergency response plan. EPA seeks comment on whether other adjectives, such as "practicable," or "reasonable," might better describe the type of response necessary.” (p. 80)

“Today’s proposed CMOM standard permit condition for municipal sanitary sewer collection systems contains five general performance standards shown in Table 12. ... EPA requests comments on these performance standards, including whether they are worded clearly, whether they are appropriate to assure compliance with the CWA, and whether additional performance standards would be appropriate.” (p. 79-81)

G. What Are the Proposed Components of CMOM Programs?

“Today’s proposal identifies six components of CMOM programs that EPA believes are generally necessary to meet the five performance standards in the proposed standard condition. The CMOM program would need to:

- (1) Identify program goals consistent with the general standards;
- (2) Identify administrative and maintenance functions responsible for implementing the CMOM program and chain of communication for complying with reporting requirements for SSOs;
- (3) Include legal authorities necessary for implementing the CMOM program;
- (4) Address appropriate measures and activities necessary to meet the performance standards;
- (5) Provide design and performance provisions; and
- (6) Monitor program implementation and measure its effectiveness.

EPA requests comments on these components of a CMOM program and whether additional components should be specified. In particular, the Agency requests comment on whether to require information about the permittee’s capability and resources to implement the CMOM program as a separate component of the CMOM documentation requirements.

EPA also requests comments on whether each of the proposed program components is necessary to the goals of eliminating all avoidable SSOs and minimizing the health and environmental risks of those SSOs that do occur.” (p. 81)

3. Legal Authorities

“The Agency requests comment on whether the legal authority for controlling I/I should specify controlling I/I from private sources, such as the privately owned portions of building laterals.” (p. 83)

“EPA requests comments on the legal authority necessary to implement a CMOM program, and whether additional elements should be specified in the standard permit condition. In particular, EPA requests comments on whether controlling the introduction of grease from commercial establishments and

institutions into a collection system should be specifically listed under the legal authorities section.”
(p. 84)

4. Maintenance and Activities

c. Use of Timely, Relevant Information

“EPA requests comments on the use of timely information in a CMOM program and the best way to reflect priorities in the proposed CMOM provision.” (p. 86)

“EPA requests comments on the degree of specificity that is appropriate in this provision for requiring preventive maintenance programs. In particular, the Agency requests comments on whether specific aspects of a preventive maintenance program should be identified in the standard permit condition as a measure or activity of a CMOM program.” (p. 87)

(1) New Connections

“EPA requests comment on the specific procedures and protocols that municipalities use to support capacity certifications and on whether any State requirements specify particular protocols and procedures for evaluating capacity.” (p. 88)

“EPA requests comment on whether existing State requirements provide adequate safeguards for ensuring that capacity limitations associated with new development are identified and reported to the appropriate State officials, or whether additional reporting requirements should be incorporated in the CMOM standard permit condition.” (p. 88)

(2) Capacity Deficiencies

“Under today’s proposal, EPA would require more intensive evaluations and studies in areas of the collection system where peak flow conditions have contributed to an SSO event or to noncompliance at a treatment plant (see requirements for system evaluation and capacity assurance plans). This approach seems consistent with industry practice, where portions of the collection system that experience wet weather SSOs are typically given a high priority in rehabilitation efforts. Further, the identification of likely SSO locations and evaluation of the causes of SSOs are recommended as part of a comprehensive preventive maintenance program and capital expenditure plan (see draft Protocols for Identifying Sanitary Sewer Overflows, ASCE, April, 2000). EPA requests comments on this targeting approach.” (p. 89)

“EPA requests comments on the relationship between proposed requirements for programs to identify structural deficiencies, programs to identify hydraulic deficiencies and system evaluation and capacity assurance plans, and how the CMOM provisions for these measures should be coordinated.” (p. 89-90)

5. Design and Performance Provisions

“The Agency requests comments on ownership issues associated with programs to oversee new sewers and major rehabilitation/repair efforts.” (p. 92)

“The Agency requests comment on the continued use of existing I/I allowance criteria in light of improved materials of construction, and whether the Agency should investigate the need for modifying these requirements to further prevent SSOs in the future.” (p. 92)

6. Monitoring, Measurement, and Program Modifications

“Performance indicators for sanitary sewer collection systems are discussed in detail in section III.N of today’s preamble. EPA requests comments on which performance indicators would be the most useful for characterizing collection system performance. In addition, the Agency requests comments on whether it should establish or recommend a minimum standard set of performance indicators to be tracked as part of the CMOM program. comments on the use of the procedure for rating sanitary sewer collection system performance developed by the American Society of Civil Engineers (ASCE). (See Optimization of Collection System Maintenance Frequencies and System Performance, ASCE, 1999.)” (p. 93)

7. Communications

“EPA seeks comment on whether communication with interested parties should be a mandatory element of the CMOM program (i.e., whether it should be included in the list of mandatory program elements in proposed 122.42(e)(2)), and, if so, which aspects should be mandatory requirements (e.g., development of a communication plan).” (p. 94)

H. Should EPA Set Minimum Levels for CMOM Program Activities Such as Preventative Maintenance?

“The Agency invites comments and specific suggestions on the use of national minimum standards in the proposed CMOM provision.” (p. 95)

I. What are the Major Documentation Requirements in the Proposed CMOM Standard Permit Condition

1. CMOM Program Summaries

“In general, CMOM program summaries should be as brief as possible. EPA expects that the length of the summary would vary depending on the size and complexity of the system and other factors. The CMOM program summary for some very small municipalities may only be several pages long. EPA requests comments on the appropriate scope and content of the CMOM program summary.” (p. 97)

c. Immediate Notification to the Public, Health Agencies, Other Affected Entities, and the NPDES Authority

“EPA expects that the plan would identify appropriate authorities at the local, county, and/or State level to receive notification and identify the roles and relationships of the permittee, public health

authorities, and other authorities, including lines of communication and the identities of responsible officials. EPA requests comments on this approach.” (p. 99)

ii. Immediate Notification of the Public

“Under the proposed provision, the permittee would be responsible for notifying the public in accordance with the permittee’s overflow emergency response plan. ... EPA is particularly interested in examples illustrating the appropriateness of an entity other than the permittee providing immediate public notification due to institutional arrangements with other entities that provide notification of public health risks and can provide the necessary information on overflows with the necessary promptness. ... EPA seeks comment on whether more flexible wording would provide greater flexibility while ensuring the same level of public health protection (for example, replacing "You must notify" with "You must ensure that the public is notified . . ."). EPA also seeks comment on how to clarify when the public health risk warrants different forms of public notification.” (p. 100-101)

iii. Immediate Notification of Health Officials

“EPA does not expect that immediate notification to public health authorities would entail significantly more information collection or reporting responsibilities than those already proposed for immediate noncompliance reporting to NPDES authorities or immediate notification to the public. EPA seeks comment on whether the regulation should specify certain minimum elements of this notification, such as a characterization of the size of the overflow and when the overflow began and ended, if known.” (p. 102)

“EPA seeks comment on whether the rule should provide guidance on how the overflow emergency response plan should identify which additional entities to notify, and under which circumstances.” (p. 102-103)

v. Additional Public Notification

“As discussed in Section VI.B.4., the Agency is also requesting comment on whether "potential to affect human health" is the appropriate criterion to trigger additional public notification requirements.” (p. 103)

4. System Evaluation and Capacity Assurance Plan

a. Evaluations

“EPA requests comments on whether the Agency should provide guidance or guidelines on characterizing information collected during collection systems evaluations, and if so what kind. For example, the Agency notes that it is often very difficult to interpret and compare I/I values that do not specify the conditions under which the values were observed. In addition, the Agency requests comment on whether CMOM permit provisions should specify minimum information requirements for

evaluations.” (p. 107)

“EPA requests comments on the existence of NPDES permits authorizing discharges from PEFTFs in other States, and the framework under which those permits were issued, including articulated expectations for how long the facilities were expected to operate.” (p. 108-109)

“EPA requests comment on potential health and/or environmental impacts or benefits of long-term PEFTF use, and on the treatment efficiency of various technologies used for PEFTFs, and how such treatment efficiencies compare to biological treatment systems operating under peak flow conditions.” (p. 109)

K. Should There Be an Alternative CMOM Special Permit Condition for Small Municipal Sanitary Sewer Collection Systems?

1. Major Options for CMOM Standard Permit Conditions for Small Municipal Sanitary Sewer Collection Systems

“EPA requests comment on the following options for establishing a CMOM standard permit condition for small municipal sanitary sewer collection systems. (see preamble for detailed discussion)” (p. 114-118)

Option 1 Same CMOM standard permit condition for all municipal sanitary sewer collection systems

Option 2 Less-detailed CMOM standard permit conditions for small municipal sanitary sewer collection systems

“EPA seeks comment on how well Option 2 would satisfy the objective of proposing less-detailed CMOM standard permit conditions for small municipalities.” (p. 115)

Option 3 Limit documentation requirements for small municipal sanitary sewer collection systems that meet specified criteria

“Under such approaches, if appropriate, the NPDES authority could include more stringent requirements in a permit, or require a written program and/or an audit pursuant to other authorities such as the information-gathering authorities under CWA section 308 or analogous State law. EPA seeks comment on the appropriateness of such approaches.” (p. 118)

Option 4 Only permits for targeted small municipal sanitary sewer collection systems contain CMOM requirements

2. Approach Favored in Today’s Proposal

“The permit would specify the time period after the SSO discharge during which the CMOM program summary and the CMOM program audit would need to be completed. Section III.L.3 of today’s preamble discusses recommendations for such timing. The Agency requests comment on these timing recommendations.” (p. 118)

“In addition, EPA is proposing that the NPDES authority be able to modify or exclude the requirements at proposed paragraph (e)(2)(v) of this section, which would require the permittee to establish requirements and standards for the installation and testing of new sewers, pumps and other appurtenances; and rehabilitation and repair projects, in cases where small collection systems are not expected to have significant new installations of sewers, pumps and other appurtenances. EPA requests comments on whether these or other simplifications are appropriate.” *(p. 120)*

3. What Thresholds are Appropriate for Defining the Applicability of the CMOM Standard Permit Condition for Small Municipal Sanitary Sewer Collection Systems?

“EPA requests comments on whether permittees, particularly operators of small municipal satellite collection systems, will have difficulty in characterizing the average daily flow.” *(p. 120)*

“EPA is considering a number of alternatives for defining the various thresholds for CMOM requirements for small municipal sanitary sewer collection systems and requests comments on those and other alternatives. Potential thresholds could include average daily flows of 7.5 mgd, 5 mgd, 2.5 mgd, and 1 mgd. In particular, the Agency requests comment on administrative and technical aspects of managing a collection system that should be considered in developing threshold criteria. For example, what are typical staff sizes and engineering capabilities for the different size thresholds?” *(p. 121)*

L. Timing of CMOM Program Implementation

3. Deadlines for CMOM Documentation Requirements

“EPA requests comment on an alternative approach for the timing of audit submission which would incorporate the CMOM program audit as a permit application requirement under proposed 40 CFR 122.38(c)(3).” *(p. 124)*

“EPA requests comments on the recommended general deadlines for different CMOM program documentation requirements and the role system-specific factors could play in establishing deadlines in the initial permit containing a CMOM condition. One approach upon which EPA requests comments is to consider performance of the permittee’s collection system and general level of compliance when developing deadlines for CMOM requirements.” *(p. 125)*

4. Timing of Significant Capital Investments

“Appropriate sewer rehabilitation is necessary to maintain the structural integrity of a sewer system and to reduce the hydraulic loads of the system. Capacity enhancement, which can include rehabilitation as well as other structural modifications to the collection system, is necessary where peak flow conditions contribute to an SSO discharge or cause compliance problems at the treatment plant. Structural and hydraulic problems are often closely related. Both rehabilitation and capacity enhancement typically involve a complex, dynamic process of identifying problems, evaluating the system, identifying appropriate measures, and implementing those measures. EPA requests comment on whether this approach provides the permittee with adequate time to develop information on the

number, location and volume of SSO events to be able to develop an effective response.” (p. 127)

“EPA requests comment on the factors that should be considered in developing capital improvement schedules for short- and long-term remedial activities and capacity assurance.” (p. 129)

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

1. Prioritization of CMOM 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 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.” (p. 130)

“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.” (p. 133)

“EPA requests comments on the role of performance indicators to track system performance and key activities in evaluating compliance.” (p. 136)

P. Would the NPDES Authority Approve CMOM Programs Developed Under the Standard Permit Conditions

“The Agency requests comments on how lack of CMOM program approval might impact the permittee’s implementation of its program. In particular, would the proposed approach impact the ability of the permittee to obtain funding? The Agency invites comment on whether any specific aspects of a CMOM program, such as a determination of adequate capacity, should be approved under the permit process and whether there are any circumstances when the regulatory agency should formally approve aspects of the permittee’s CMOM program.” (p. 137)

IV. PROPOSED PROHIBITION OF DISCHARGES FROM MUNICIPAL SANITARY SEWER COLLECTION SYSTEMS

C. Potential Alternatives to Prohibiting Sanitary Sewer Overflows – Authorized Discharges at Less than Secondary

“The purpose of the prohibition on untreated sanitary sewer overflow as proposed above is to assure that

raw sewage (human excrement and other pollutants) does not go into rivers and streams. That measure is important to protect human health and the environment. EPA is soliciting comments on an alternative approach that the Agency believes may well result in less treatment of sewage prior to discharge. The alternative approach would allow municipalities in limited circumstances, to divert some of the sewage to peak excess flow treatment facilities (at satellite locations) that may provide less than secondary treatment, before discharging to rivers and streams.” (p. 142)

“The Agency nonetheless invites comment on the legal and practical implications if EPA were to support a BAT/BCT “authorization” alternative. EPA recognizes that any such change involves complex issues that will involve additional data collection and analysis as well as a more detailed articulation of potential approaches. Pursuing an alternative approach would therefore require additional notice and comment.” (p. 144)

“EPA requests comment on the relative health and environmental benefits associated with applying the secondary treatment regulations at 40 CFR Part 133 or the application of a BAT/BCT framework to intermittent, peak flow discharges from sanitary sewer collection systems. Comments on such alternatives should be mindful of the need to assure that SSO discharges (authorized under either a secondary treatment or BAT/BCT framework) remain subject to the water quality-based requirements of the Act.” (p. 147)

“EPA requests comments on this approach and on how the standard permit conditions for CMOM programs and the prohibition on SSO discharges that are proposed in today’s notice would need to be modified if the Agency were to adopt such an approach. The Agency also requests comments on how the factors associated with the BAT and BCT standards should be used to identify measures necessary to come into compliance with various parts of the CMOM program standard permit condition, such as the determination of adequate system capacity (i.e., capacity for delivery of flows for treatment prior to discharge).” (p. 148)

“Since a BAT/BCT framework would provide more flexibility for authorizing discharges from PEFTFs under an NPDES permit, the Agency believes that if this approach were adopted, it would be necessary to build a comprehensive process for analyzing the need of a PEFTF into the CMOM provision. EPA requests comment on what information should be considered in such a comprehensive process and how it should be incorporated into the CMOM approach.” (p. 148)

“In addition, as noted in the draft *SSO Needs Report* and section I.K of today’s preamble, some municipalities facing some of the most significant I/I problems in their collection system, may significantly reduce costs by incorporating a limited number of treated discharges into a comprehensive control strategy that may also include expanding collection system and/or treatment plant capacity, and reducing peak flows. The Agency requests comments on the consideration of these costs under an approach based on a system-wide application of BAT/BCT and more stringent water quality-based requirements as well as under the secondary treatment framework proposed in today’s notice.” (p. 148-149)

“The applicant would identify cost-effective alternatives in the companion engineering report. ... The engineering report would, at a minimum, include a demonstration that increased storage of untreated wastewater during peak flow conditions, additional reduction of inflow and infiltration, increased capacity of the system, or other alternatives specified by the Director are not practical and not cost-effective. EPA requests comments on other criteria for evaluating alternatives (e.g., measures are not feasible, remaining I/I is not excessive).” *(p. 150)*

“EPA requests comment on whether it should evaluate the appropriateness of providing guidance on minimum treatment requirements, and if so what minimum treatment requirements for PEFTFs should be (e.g. high-efficiency sedimentation, primary treatment, etc.).” *(p. 152)*

“EPA requests comment on other alternatives to the “prohibition and excuse” framework proposed today, such as approval of CMOM programs or defining *de minimis* thresholds for SSO discharges, and how such alternatives would appropriately protect human health and the environment.” (p. 154)

D. How Does the Proposed Standard Condition Address Discharges Caused by Severe Natural Conditions?

“The Agency requests comment on the general approach of addressing discharges caused by severe natural conditions by codifying criteria for enforcement discretion as well as alternative approaches such as using the proposed criteria to establish a framework for an affirmative defense.” (p. 155)

1. What Criteria Should Be Used When Evaluating Discharges Caused by Severe Natural Conditions?

“The Agency requests comments on whether and how the feasibility criterion should be applied, including whether it should be applied in addition to the "severe natural conditions" criterion.” (p. 156)

“The Agency requests comments on whether these examples clarify the term "severe natural conditions," whether they generally represent technically feasible levels of control, whether they represent a reasonable range of examples relative to the performance of sanitary sewer collection systems, and whether they should be coupled with the "no feasible alternatives" criterion or stand independently.” (p. 156)

E. How Would the Proposed Standard Condition Address Discharges Caused by Factors Other Than Severe Natural Conditions?

“The Agency requests comment on what factors should be considered in demonstrating "beyond the reasonable control" of the permittee or "adequate measures" and whether and how the proposed prohibition should be clarified. However, as discussed in section III.H, the Agency does not believe that it should develop national minimum levels for reasonable control or adequate measures.” (p. 157)

“The Agency requests comment on whether the term "unintentional" should be retained in this provision.” (p. 157)

“The Agency requests comment on specific situations where a permittee may claim an affirmative defense for an intentional action.” (p. 158)

“The Agency requests comment on the general approach of using an affirmative defense to address discharges caused by factors other than severe natural conditions as well as alternative approaches such as codifying criteria for enforcement discretion.” (p. 158)

F. What Is the Proposed Timing for Notifying the NPDES Authority?

“EPA is proposing that, where the permittee wants to raise a claim that a specific sanitary sewer discharge meets the limited criteria of the proposed prohibition, the permittee would need to notify the NPDES authority within ten days of the date of the discharge. The proposed ten-day deadline is intended to ensure that claims under this provision would be submitted while information about the event is still fresh and would prevent a permittee from raising claims after the NPDES authority could respond with a timely investigation. The Agency requests comment on this proposed time period.” (p. 158-159)

“EPA is aware that in some cases a permittee raising a claim under the prohibition might be in the position of submitting this ten-day notification even in cases where the discharge itself did not warrant noncompliance reporting through 24-hour or 5-day reports – i.e., where the discharge was not likely to imminently and substantially endanger human health. The Agency seeks comment on ways to provide more consistency between the two types of reporting, particularly the criteria that trigger each type of report.” (p. 159)

V. PROPOSED PERMIT REQUIREMENTS FOR MUNICIPAL SATELLITE COLLECTION SYSTEMS

B. How Many Municipal Satellite Collection Systems Are There?

“EPA requests comments on the number of municipal satellite collection systems in the United States, and estimates of their size distribution. Such estimates are important in determining the national impact of today’s proposed rule.” (p. 160)

D. How Would Municipal Satellite Collection Systems be Regulated Under Today’s Proposed Rule?

1. Regional Implementation of Measures in Municipal Satellite Collection Systems

“The Agency recognizes that some regional collection systems do not have sufficient legal authority or jurisdiction over the satellite collection systems that send it flow to ensure the satellite collection system fully implements an adequate CMOM program. Therefore, today’s proposal is not intended to mandate that regional collection systems must implement CMOM activities in municipal satellite collection systems where the regional system does not have sufficient authority. Rather, regional collection systems should only be assigned such responsibilities where the regional collection systems has sufficient legal authority to implement such an approach. The Agency requests comments on when this flexibility is appropriate and the legal and institutional barriers associated with holding regional collection systems responsible for municipal satellite collection systems.” (p. 163)

2. Scope of Coverage

“The Agency requests comment on whether the framework for requiring NPDES permit coverage for municipal satellite collection systems should provide criteria for targeting specific municipalities (e.g.

only targeted municipal satellite collection systems would need NPDES coverage), and if so, what targeting mechanism should be used (e.g., occurrence of overflow events, whether or not they resulted in a discharge to waters of the U.S., problems identified by the regional collection system, service population/size threshold).” (p. 164)

“Today’s proposal regarding municipal satellite collection systems would expand NPDES coverage for collection systems composed of either sanitary sewers or combined sewers, or a combination of both types of sewers. The Agency requests comments on whether the provision should apply to both municipal satellite collection systems composed of combined sewers and municipal satellite collection systems composed of separate sanitary sewers (as well as systems composed of both sanitary and combined sewers).” (p. 164)

““No discharge” NPDES permits would be especially appropriate to address SSOs from collection systems that are part of “no discharge” POTWs and to establish CMOM program requirements. Some such POTWs already have NPDES permits, but only to address the beneficial use and disposal of biosolids (sewage sludge). EPA requests comments on this aspect of the proposal, specifically, whether (and how) to ensure NPDES permit coverage for municipal satellite collection systems that convey wastewater to a “no discharge” POTW treatment facility.” (p. 165)

“EPA is also proposing to define municipal satellite collection systems as a municipal collection system that conveys wastewater to a publicly owned treatment works. EPA requests comments on whether this provision should be expanded to address municipal satellite collection systems that convey wastewater to privately owned treatment works.” (p. 165)

F. What Are the Proposed Permit Application Requirements for Municipal Satellite Collection Systems?

“Today, EPA is proposing that application requirements for municipal satellite collection systems would be the information required under 122.21(j) (i.e., information required in Form 2A) except for the following regulatory provisions: (1)(viii)(B), (1)(viii)(C), (1)(viii)(E), (2)(ii), (2)(iii), (3)(iii), (4), (5), (6) and (7). In terms of the numbering system used on Form 2A, the applicant would not have to submit the following information required in Form 2A: A.8.b, A.8.c, A.8.e, B.2.(a)-(f), B.3, A.11(a)-(c), A.12, B.6, D, E.(1)-(4), F(2)-(8), F(9)-(15), but would have to submit the rest of the information on the form. In essence, the Agency is proposing to use the Form 2A permit application requirements for municipal satellite collection system except for provisions that apply only to treatment plants. EPA requests comments on whether these are adequate and appropriate application requirements for municipal satellite collection systems.” (p. 166)

“EPA is proposing the following deadlines for the owner or operator of a municipal satellite collection system to submit a permit application where required:

- If on [date 2 years from date of publication of the final rule], a permit application for the regional collection system that receives flows from the municipal satellite collection system

has been submitted to the NPDES authority and is currently pending (i.e., the permit for the regional system has not been reissued), the owner or operator of the municipal satellite collection system must submit a permit application by [date 3 years from date of publication of the final rule];

- If on [date 2 years from date of publication of the final rule], a permit application for the regional collection system that receives flows from a municipal satellite collection system is not pending, the owner or operator of the municipal satellite collection system must submit a permit application by the date that the treatment facility is required to submit the permit renewal application;
- Where a municipal satellite collection system that does not have permit coverage experiences a sanitary sewer overflow that discharges to waters of the U.S., the owner or operator of the satellite system must submit a permit application within 180 days of the discharge; and
- Where the Director requires the owner or operator of the municipal satellite collection system to submit a permit application on a case-by-case basis, the owner or operator of the satellite system must submit a permit application within 180 days of notification by the Director, unless the Director establishes an alternative deadline.

EPA seeks comment on these deadlines.” (p. 166-167)

H. What Types of Permit Conditions Would Be in Permits for Municipal Satellite Collection Systems?

“As discussed elsewhere, EPA is requesting comment on whether the standard permit condition for reporting, public notification, and recordkeeping should apply to relevant noncompliance events associated with combined sewers. If, based on comment, EPA determines in the final rule to apply this condition to such discharges, the condition would be included in permits for combined sewer systems.” (p. 168)

VI. PROPOSED STANDARD PERMIT CONDITIONS FOR REPORTING, PUBLIC NOTIFICATION, AND RECORDKEEPING FOR MUNICIPAL SANITARY SEWER COLLECTION SYSTEMS AND SSOs

A. Background Information

4. How Many SSOs Will be Reported Under the Proposed Requirements?

“The Agency recognizes that today’s rulemaking would address a significant number of SSO events. EPA intends to structure reporting, recordkeeping and public notification requirements in a workable manner to recognize the variation in health and environmental risks associated with different types of events. EPA seeks comment on alternative approaches to structuring these requirements besides those proposed here.” (p. 174-175)

5. Request for Comments on Application to Combined Sewers

“EPA requests comment on whether the standard condition for reporting, public notification, and recordkeeping proposed today should be applied to combined sewers as well as sanitary sewers.” (p. 175)

B. Summary of Proposed Requirements

1. Proposed Reporting Requirements

a. Immediate Notification of the NPDES Authority

“EPA is not proposing a definition of "immediate" in today’s proposed rule but seeks comment on whether additional clarification is appropriate, and the relationship between "immediate" notification and 24-hour reporting to NPDES authorities. In general, EPA does not favor imposing a uniform period for notification, which could suggest that it is acceptable to wait the entire designated time period before providing notification – e.g., waiting until hour 23 of a 24-hour period.” (p. 176-177)

“EPA requests comments on using other criteria for requiring reporting to the NPDES authority, such as "may endanger health or the environment" or thresholds based on the estimated volume of an SSO.” (p. 177)

b. Five-Day Follow-Up Notification of the NPDES Authority

“The Agency requests comments on whether these proposed minimum information requirements satisfy the needs of NPDES authorities for immediate and follow-up reports. EPA also requests comments on whether they are all necessary in light of the NPDES authority’s ability to require additional reporting in permits or to use other authorities to request information about a specific incident after it has occurred.” (p. 178)

“The Agency also requests comments on whether today’s proposal would provide NPDES authorities with flexibility to establish requirements to report priority discharges from collection systems in a manner consistent with the responsibilities of the NPDES authority. The Agency requests comments on difficulties permittees may encounter when trying to provide the information within the proposed time periods.” (p. 178)

c. Discharge Monitoring Reports

ii. What Information Would Be Included in DMRs?

“EPA requests comments on whether the distinction between capacity-related SSOs and other SSOs is clear and would provide useful information. The Agency requests comments on other potential classifications, such as SSOs caused by wet weather.” (p. 180)

“Under the proposal, permittees would have to identify the number of locations where SSOs occurred. This information is intended to indicate to the NPDES authority whether repeated SSOs are occurring at the same location. An understanding of whether repeated SSOs occur at the same location may shed light on the effectiveness of the permittee’s program to respond to SSOs and address deficiencies within its system. EPA requests comments on whether this requirement would provide useful information.” *(p. 180)*

“During a widespread wet weather event, SSOs may occur at the same time at multiple locations in a collection system. Under the proposed requirements, each SSO discharge would have to be counted separately, even if multiple SSOs occurred at the same time. In other words, if a system experienced SSO discharges at several locations at the same time, the permittee would not count these discharges as one overflow. Such reporting would be consistent with the existing NPDES framework where each discharge from a separate location is a distinct violation. EPA requests comments on whether this is clear in the proposed language.” *(p. 180)*

“EPA requests comment on whether two additional reporting elements should be added to the proposed requirements:

- (1) Reporting the number of locations where SSOs occur. This would allow NPDES authorities to identify if a permittee is not reporting correctly; and
- (2) The cumulative number of days of duration of SSO discharges during a reporting period (e.g., if sewage spilled at six different locations and each spill lasted for two days, then the permittee would report a total of twelve days of spills). The Agency requests comments on how days of duration would be defined under this element (e.g., would an SSO that started at 11:50 p.m. and stopped at 12:01 a.m. the next day count as one or two days?). Alternately, should the operator be required to report the actual duration (i.e., 11 minutes in the above example), rather than days?” *(p. 180)*

“The proposed standard permit condition would establish minimum DMR requirements. NPDES authorities would be able to establish more frequent reporting requirements in permits. In addition, the NPDES authority may use other authorities to require more specific information. EPA requests comments on the content of the proposed DMR requirements.” *(p. 181)*

d. Proposed Requirements for Annual Reports

“The Agency requests comment on whether other municipalities that do not have overflows should be required to notify the public of the availability of a report and whether there are other situations where a report should not be necessary. The Agency also requests comment on whether the service population threshold is appropriate.” *(p. 181)*

“Other alternative approaches upon which the Agency requests comments are:

- (1) Requiring all permittees to submit annual reports regardless of whether they have had an SSO. This may facilitate recordkeeping by NPDES authorities.

- (2) Requiring annual reports only from permittees whose collection systems provide service for a certain population size or above.
- (3) Requiring annual reports only if a trigger threshold is exceeded, such as: (a) a specified number of overflows per system or service area; (b) a specified number of overflows per mile of sewer collection line; or (c) a specified number of overflows per capita of service population;
- (4) Giving the Director of the NPDES authority discretion to identify criteria for submittal of annual reports;
- (5) Giving the Director discretion as to when to require such reports below the trigger thresholds referred to in (3), but requiring annual reports if these trigger thresholds are exceeded; or
- (6) Not requiring annual reporting requirements for any permittees.

EPA invites comment on limiting the proposed annual report provision to overflows that go to waters of the U.S.” *(p. 181-182)*

2. Proposed Requirements for Immediate Public Notification

“Among the requirements for standard permit conditions being proposed today is a framework for providing immediate notification to the public and other appropriate entities. The philosophy underlying the proposal is that the proposed reporting, public notification, and recordkeeping standard permit condition would provide a general framework for immediate notification, and the permittee would provide system-specific details in their overflow response plan as to how the requirement would be implemented. EPA requests comment on the general approach of clarifying implementation details in an overflow response plan.” *(p. 183)*

b. Which SSOs Would Be Subject to Immediate Notification Requirements?

“Under today’s proposal, permittees would have to provide immediate notification of overflows that may imminently and substantially endanger human health. EPA believes that the criterion “may imminently and substantially endanger human health” is an appropriate threshold because it would allow for prioritization of SSOs. EPA requests comments on using other criteria for requiring immediate notification, such as “may endanger health or the environment” or thresholds based on the estimated volume of an SSO.” *(p. 184)*

i. Immediate Notification to the Public

“EPA requests comments on implementation issues associated with public notification as well as on the clarity of today’s language.” *(p. 185)*

ii. Immediate Notification to Public Health Authorities

“Public health authorities play an important role in protecting the public from environmental and

disease-causing agents. They develop policies and plans to meet local community needs, monitor and disseminate information on community health, provide health-based services and education, and enforce health and safety laws.” (p. 185)

“EPA requests comments on how the language in the proposed standard condition addresses health authorities. The Agency wants to strengthen health authorities’ involvement in SSO response in a flexible, workable manner. The Agency requests comment on whether there are situations where a permittee should not be required to notify health authorities of overflows that may imminently and substantially endanger human health (e.g., if some communities do not have an appropriate health authority who can target local concerns or provide an immediate response if an overflow occurs).” (p. 185)

iii. Immediate Notification to Other Entities

“EPA seeks comment on whether a final SSO rule should provide guidance on how the overflow emergency response plan should identify which public water systems to notify and under what circumstances.” (p. 186)

d. How Does the Timing for Immediate Public Notification Relate to the Timing for Noncompliance Reporting?

“The Agency seeks comment on the discrepancy in timing requirements between "immediate" notification and 24-hour noncompliance reporting. Does the distinction have practical value, or should more consistency be provided in order to reduce confusion?” (p. 188)

3. Proposed Recordkeeping Requirements

a. For What Data Describing Overflows Would a Permittee Be Responsible?

“The Agency requests comments on the types and accuracy of various methods to estimate overflow volumes.” (p. 189-190)

“The proposed recordkeeping provision would require the permittee to retain specified information for a minimum of three years. The proposed three-year time period would cover the time period extending back either three years or to the effective date of the first NPDES permit or other enforceable mechanism issued containing the recordkeeping requirement, whichever is less. The permittee would still be required to comply with any existing recordkeeping requirements in a currently-effective NPDES permit or other enforceable mechanism. EPA seeks comment on whether the regulatory language should be modified to clarify this issue.” (p. 190)

“The Agency requests comments on whether the proposed requirement to maintain records of documentation of performance and implementation measures should be clarified by providing specific measures.” (p. 190)

4. Additional Public Notification

“The permittee’s overflow emergency response plan (required under the proposed CMOM provision) should specify procedures and protocols for this public notification. EPA requests comments on what types of public notification might be appropriate under this provision. In addition, the Agency requests comments on the clarity of this provision and how it should be further clarified, including the need for clarification of the criterion "potential to affect human health.” (p. 191)

“EPA intends that the criterion "potential to affect human health" be interpreted differently from "imminently and substantially endanger human health." Whereas the latter criterion would trigger NPDES noncompliance reporting and immediate public notification in cases where overflows pose immediate health threats, the former would be intended to notify the public about the presence of overflows that may not meet the "imminent and substantial endangerment" trigger but that nevertheless warrant avoidance. EPA seeks comment on the scope of the "potential to affect human health" criterion. Although EPA intends proposed 122.42(g)(6) to cover a broader universe of potential exposures, the Agency would appreciate information indicating whether this criterion is too broad or whether EPA needs to clarify further how a permittee would be expected to implement this requirement through its overflow emergency response plan. In particular, the Agency requests comment on whether it should adopt a narrower criterion for this additional notification, such as "poses a significant risk to public health." (p. 191-192)

“The information would need to be targeted to the potentially affected population, including consideration for non-English-speaking individuals. EPA seeks comment on whether the regulation should provide specific guidance on the information that should be provided in posted areas.” (p. 193)

“EPA seeks comment on whether the regulation should prescribe the posting criteria, locations, and information more specifically. EPA is also requesting comment on how to provide the greatest amount of flexibility for the permittee to address site-specific circumstances. For example, it may be appropriate to allow another agency, in coordination with the permittee and other affected entities, to assume responsibilities for posting – for example, the local public health authority or the local parks department. Should the regulatory language be broadened to provide this flexibility (e.g., "You must ensure the public is notified" rather than "You must notify")?” (p. 193)

“EPA would also like to provide permittees with the flexibility to coordinate the posting of SSO locations with posting for other environmental, public health, or safety risks. For example, a locality may already have a signage program to address shellfishing restrictions, hazardous swimming conditions, or public health risks from combined sewer overflows, storm drains, or treatment facilities. EPA seeks comment on how the regulation could be written to provide this flexibility.” (p. 193)

C. Implementation Issues

1. Volume Estimates

“The Agency believes that rough estimates of SSO volume can be made through visual observations by an experienced crew. The Agency requests comments on the types and accuracy of various methods to estimates overflow volumes.” (p. 194)

“The Agency believes that rough estimates of SSO volume can be made through visual observations by an experienced crew. The Agency requests comments on the types and accuracy of various methods to estimates overflow volumes. The Agency also encourages NPDES authorities to develop guidance for permittees and systems on estimating overflow volumes. One approach would be to suggest a rough classification scheme for overflow volumes (e.g., class I - under 250 gallons; class II - between 250 and 1,000 gallons; class III - between 1,000 and 10,000 gallons; class 4 - between 10,000 and 250,000 gallons; and class 5 - over 250,000 gallons). The Agency requests comments on the different approaches that States may currently recommend and whether such approaches would help to clarify the proposed requirements.” (p. 194)

2. Reporting Drillage and Very Small Overflows

“The Agency requests comments on the appropriateness of requiring reporting, public notification, and recordkeeping for very small releases of wastewater such as those described above and whether the proposed standard permit conditions should specifically exempt very small releases from reporting, public notification, and recordkeeping requirements, and if so, how that should be done. One approach would be to establish a volume threshold such as less than 20 gallons per day. This approach is similar to the approach taken for reportable quantities of hazardous substances and oil that must be reported under section 311 of the CWA. The Agency requests comments on whether the threshold should depend on whether the overflow is contained and the spill area cleaned. Another approach would be to limit any exemption to specific activities (e.g., very small releases associated with maintenance activities).” (p. 195)

“The Agency also requests comments on other examples of very small releases of wastewater where it may not be appropriate to require reporting, public notification, or recordkeeping under the NPDES program. The Agency also requests comments on the prevalence of these small volume releases.” (p. 195)

3. Exfiltration

“Sanitary sewer systems are not completely watertight. Most, if not all, sanitary sewer systems experience some I/I through cracks, joints and other imperfections in the system. Depending on conditions such as the level of flow into sewers and the level of ground water, exfiltration can occur at the same type of imperfections that allow for I/I. The Agency requests comments on how exfiltration can be detected and characterized and how exfiltration should be addressed under the proposed reporting, public notification and recordkeeping standard permit condition and the proposed definition of SSOs, if at all.” (p. 195-196)

6. Reporting Anticipated Discharges

“Today’s proposed reporting, public notification and recordkeeping requirement would not require the permittee to notify in advance of an anticipated discharge. Advance notification, however, could allow for communication between the NPDES authority and the collection system operator that can lead to a better understanding of the facts surrounding the anticipated discharge, the availability of options to either eliminate or mitigate the release and potential regulatory consequences of the discharge. EPA requests comments on whether permittees should be required to report anticipated discharges.” (p. 196-197)

7. Flexibility to the NPDES Authority

“Today’s proposal would provide NPDES authorities with flexibility in a number of areas:

- Content - Under Federal requirements, NPDES authorities can establish more stringent requirements as appropriate. (As noted above, some NPDES States have laws that restrict them from being more stringent than Federal law);
- Format - the NPDES authority establishes the format of written reports;
- Reporting Mechanism - The NPDES authority establishes the mechanism for reporting within 24 hours (e.g., by phone to specified phone number, to a specified e-mail address); and
- Submittal date - The NPDES authority can establish the date when DMRs and annual reports are submitted.

The Agency requests comments from NPDES authorities as to whether this provides enough flexibility in light of the increased burdens associated with the proposed requirements.” (p. 197-198)

VII. COST-BENEFIT ANALYSIS

A. Baseline

“There are costs and benefits associated with the possibility of accelerated investment, but at the present time EPA has not been able to quantify such costs or benefits. To the extent that EPA’s current estimates do not reflect these possibilities, the Economic Analysis for today’s rulemaking may understate the costs and benefits of the proposal. Due to this uncertainty, EPA requests comments on the costs and benefits associated with today’s proposal.” (p. 200)

VIII. ADMINISTRATIVE REQUIREMENTS

A. Paperwork Reduction Act

“An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA’s regulations are listed in 40 CFR Parts 9 and 48 CFR Chapter 15. Comments are requested on the Agency’s need for this information, the accuracy of the provided burden estimates, and any

suggested methods for minimizing respondent burden, including the use of automated collection techniques.” (p. 205)