



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 19 2001

OFFICE OF
WATER

Mr. Ken Kirk
Executive Director
Association of Metropolitan Sewerage Agencies
1860 Jefferson Place, NW
Washington, D.C. 20036-2505

Dear Mr. Kirk:

Thank you for your letter of March 5, 2001. Your letter asks that the United States Environmental Protection Agency (EPA) give careful consideration to revising a notice of proposed rulemaking for National Pollutant Discharge Elimination System (NPDES) regulations for controlling sanitary sewer overflows (SSOs) which was signed on January 4, 2001. Your letter indicates that you support EPA's development of national regulations to reduce uncontrolled SSOs, and that the approach in the January 4, notice has the potential to establish important performance standards for collection system capacity, management, operation and maintenance (CMOM) programs and provide needed consistency in addressing SSOs across States and EPA regions. However, you raise concerns that the favored approach to a prohibition standard permit condition in the January 4, notice perpetuates an unrealistic zero overflow standard during extreme wet weather conditions that ultimately will expose even the best-designed and operated systems to costly enforcement actions with little environmental benefit. You request that, prior to publication in the Federal Register, EPA review this proposal to evaluate alternatives that are equally protective of water quality.

Municipal sanitary sewer collection systems play a critical role in protecting human health and the environment. SSOs, which are releases of raw sewage, can result when a sanitary sewer collection system fails. The most immediate health risk associated with SSOs is exposure to disease-causing pathogens. EPA estimates that there are at least 40,000 SSOs per year (excluding basement backups).

Under the Clean Water Act, discharges to waters of the United States from municipal sanitary sewer systems are prohibited unless authorized by an NPDES permit. Permits authorizing discharges from such systems must contain technology-based effluent limitations based upon secondary treatment and appropriate water quality based effluent limitations. NPDES permits for municipal wastewater treatment plants currently require record-keeping and reporting of overflows that result in a discharge and require maintenance of the permittee's collection system. However, the Agency notes that even municipal collection systems that are operated in an exemplary fashion may experience unauthorized discharges under exceptional circumstances. Therefore, NPDES permits may provide a framework for evaluating the specific circumstances of overflows that result in a discharge, and in narrowly prescribed circumstances, excusing an overflow, either through the exercise of enforcement discretion or through establishment of an affirmative defense.

In 1994, a number of municipalities asked EPA to establish a Federal Advisory Committee (FAC) of key stakeholders to make recommendations on how the NPDES program should address SSOs. In response, EPA convened a national "SSO policy dialogue" among a balanced group of representatives, including several municipal representatives from key stakeholder organizations. EPA asked the individual stakeholders to provide input on how best to meet the SSO policy challenge. In 1995, EPA chartered an Urban Wet Weather Flows Federal Advisory Committee (FAC). The Urban Wet Weather Flows FAC reconvened the SSO policy dialogue group as its SSO Subcommittee.

The SSO Subcommittee met 12 times between 1994 and 1999. At the twelfth meeting held in October 1999, the SSO Subcommittee provided unanimous support for a framework to address SSOs. The Subcommittee supported, when taken as a whole and recognizing that they are interdependent, basic principles expressed in documents addressing suggested NPDES permit requirements for:

- (1) CMOM programs for municipal sanitary sewer collection systems;
- (2) A prohibition on SSOs, which includes a framework for raising a defense for unavoidable discharges;
- (3) Reporting, public notification, and recordkeeping requirements for municipal sanitary sewer collection systems and SSOs; and
- (4) Remote treatment facilities (or peak excess flow treatment facilities).

In addition, the SSO Subcommittee unanimously supported a set of principles for municipal satellite collection systems and watershed management, although members did not develop detailed language addressing these topics. EPA committed to reflecting the approach discussed with the SSO Subcommittee in a proposed rule.

On January 4, 2001, former EPA Administrator Carol Browner signed a notice of proposed rulemaking for NPDES requirements for SSOs. The notice included proposed standard permit conditions that are consistent with the principles unanimously supported by the SSO Subcommittee in October 1999. However, in accordance with the memorandum of January 20, 2001, from the Assistant to the President and Chief of Staff, entitled "Regulatory Review Plan," published in the Federal Register on January 24, 2001, 66 FR 7701, EPA has withdrawn this document from the office of Federal Register to give the Administrator an opportunity to review it.


The proposed standard permit conditions in the January 4, 2001, notice include a prohibition provision. The proposed prohibition standard condition would clarify that discharges to waters of the United States from a municipal sanitary sewer collection system that occur prior to a publicly owned treatment works (POTW) treatment facility are prohibited. In proposing this standard condition, the Agency notes that even municipal collection systems that are operated in an exemplary fashion may experience unauthorized discharges under exceptional circumstances. Therefore, the proposed prohibition provides a framework for evaluating the specific circumstances of overflows from a municipal sanitary sewer collection system that result in a discharge to waters of the United States and consideration of those circumstances to excuse those discharges, either through the exercise of enforcement discretion or through establishment of an affirmative defense.

The preamble to the January 4, 2001, notice 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.

The Agency continues to review this notice, including the underlying premises described in your letter, as well as the decision to move forward with a single, comprehensive rulemaking. We will provide you and the other organizations represented on the SSO Subcommittee with an update of the status of this notice at a future date.

Thank you for your interest and concern. Should you need additional information or have further questions, please contact me or your staff may call Michael B. Cook, Director, Office of Wastewater Management at (202) 564-0748.

Sincerely,

A handwritten signature in black ink, appearing to read "Diane Regas". The signature is fluid and cursive, with a large initial "D" and a long, sweeping tail.

Diane C. Regas
Acting Assistant Administrator

cc: Representatives of SSO Subcommittee to Urban Wet Weather Flows Federal
Advisory Committee