

**UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA**

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1-02-01361 (HHK)
)	
CHRISTINE TODD WHITMAN, Administrator, U.S. Environmental Protection Agency, <i>et al.</i>)	
)	
Defendants.)	

**PLAINTIFFS PENNSYLVANIA MUNICIPAL
AUTHORITY ASSOCIATION, *et al.*
FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rule 34, Fed. R.Civ. Pro. DEFENDANTS Christine Todd Whitman, Administrator, U.S. Environmental Protection Agency, *et al.* are hereby requested to produce, at the offices of the undersigned counsel for PLAINTIFFS Pennsylvania Municipal Authorities Association, *et al.*, and permit the PLAINTIFFS to inspect and copy each of the documents listed below. DEFENDANTS are directed to respond to this request pursuant to Rule 34, Fed. R. Civ. Pro. within thirty (30) days of service hereof.

INSTRUCTIONS

If DEFENDANTS object to the production of any document on the grounds that the attorney-client, attorney work-product, or any other privilege is applicable thereto, DEFENDANTS shall, with respect to that document:

- (a) State its date;
- (b) Identify its author;

- (c) Identify each person who received it;
- (d) State the present location of the document and all copies thereof; and
- (e) Provide sufficient information concerning the document and the circumstances thereof to explain the claim of privilege and to permit the adjudication of the propriety of that claim.

As referred to herein, “document” includes written, printed, typed, recorded, or graphic matter, however produced or reproduced, including correspondence, telegrams, other written communications, data processing storage units, computer disks, tapes, contracts, agreements, notes, memoranda, analyses, projections, indices, work papers, studies, reports, surveys, diaries, calendars, films, photographs, diagrams, drawings, minutes of meetings, or any other writing (including copies of any of the foregoing, regardless of whether you are now in possession, custody, or control, your former or present counsel, agents, employees, officers, insurers, or any other person acting on your behalf.)

PLAINTIFFS request that DEFENDANTS provide the following documents:

1. ALL DOCUMENTS from 1990 to the present that address the issue of whether blending can be utilized by a municipality in response to an EPA enforcement action under the Clean Water Act to minimize or eliminate sanitary or combined sewer overflows. This includes, but is not limited to, ALL DOCUMENTS discussing blending associated with the Clean Water Act enforcement action against the City of Toledo, Ohio; Borough of Indiana, Pennsylvania; Allegheny County Sanitary Authority, Pennsylvania; the City of Cambridge, Ohio; the City of Baton Rouge, Louisiana; Miami-Dade Water and Sewer Department, Florida; and enforcement actions against any other

municipality or municipal entity. This request includes draft documents, options papers, e-mails, and other documents of EPA enforcement offices (e.g., Office of Enforcement and Compliance Assurance and Department of Justice) or personnel, including but not limited to the sign-off sheets indicating who signed off on the memorandum (e.g., the sign-off sheet indicating who drafted and concurred with the July 20, 1999, memorandum from Brian J. Maas, Director, EPA Water Enforcement Division, to David McGuigan, Chief, NPDES Branch, EPA Region III regarding the Borough of Indiana, Pennsylvania).

2. ALL DOCUMENTS from 1996 to the present that set forth the position of States, EPA Headquarters, and Regional Offices, including subdivisions and personnel thereof (e.g., Office of Enforcement and Compliance Assurance, Office of Water, Office of Wastewater Management, Office of General Counsel) on whether and how blending can be approved in an NPDES permit. This request includes, but is not limited, to the following documents and any related communications (including any comments from the Office of Enforcement and Compliance Assurance and/or Regional Offices) on (a) the “Note” entitled “Controls for Peak Flows at POTW Plants” from Stephen Sweeney, OGC/WLO to Gary Pritchard, ORC/Region V, Ross Brennan, OW/OWM, Alan Morrissey, OECA/ORE and Kevin Weiss, OW/OWM; (b) E-mails and other documents from Gary Pritchard commenting on EPA Headquarters’ approach to blending; (c) E-mails and other documents from

Gary Pritchard regarding the use of blending by the City of Toledo to mitigate overflows; (d) position paper by Eric Schaeffer and/or Alan Morrissey pertaining to blending; (e) EPA's December 21, 2001, draft guidance entitled "NPDES Requirements for Municipal Wastewater Treatment During Wet Weather Conditions"; and (f) the March 20, 2002 briefing of Diane Regas and Ben Grumbles on options to address blending, emergency discharges, and peak excess flow facilities.

3. ALL DOCUMENTS relating to EPA Region IV communications to various States (including North and South Carolina) that non-biological treatment could not be used by municipalities under the NPDES program in conjunction with biological treatment to treat peak wet weather discharges or that such non-biological facilities must separately demonstrate compliance with secondary treatment requirements. This request includes, but is not limited, to any permit objection letter involving this issue and EPA's decision whether to allow the Miami-Dade Water and Sewer Department to use ballasted flocculation, notes and other documents pertaining to Miami-Dade's meeting with Diane Regas, Deputy Assistant Administrator for Water (held in approximately April, 2002), and to all related documents generated or received by EPA Region(s) and EPA Headquarters.
4. ALL DOCUMENTS from Regional Offices to delegated state agencies informing such agencies that blending and emergency discharge permitting is

prohibited, restricted under the federal bypass rule, and/or unlawful unless the requirements of the bypass rule are met (*e.g.*, no feasible alternatives). This includes, but is not limited, to comments on NPDES program implementation as well as specific permit objections.

5. ALL DOCUMENTS relating to EPA Region IV communications to various States (including South Carolina and Alabama) that peak flow facilities utilizing blending are either (a) to be reported as bypasses or upsets or (b) subject to secondary treatment concentration and percent removal requirements before being blended with the effluent from the biological units. This includes, but is not limited, to any records pertaining to EPA Headquarters' input into the Regional NPDES program interpretation as well as all related documents generated or received by EPA Region(s) and EPA Headquarters.

6. ALL DOCUMENTS associated with the April 5, 2002 and April 8, 2002 Freedom of Information Act ("FOIA"), 5 U.S.C. § 551, responses of EPA (signed by Mr. Kevin Weiss) to John Hall regarding the basis and background of the secondary treatment and bypass regulations. This includes, but is not limited, to all notes, e-mails, communications, and other documents authored or received by EPA after April 5, 2002, pertaining to such FOIA responses and any document not identified by EPA in those FOIA responses that EPA asserts are inconsistent with the FOIA response.

7. ALL DOCUMENTS associated with options evaluated or otherwise considered by EPA in the development of the December 21, 2001 draft policy entitled titled “NPDES Requirements for Municipal Wastewater Treatment During Wet Weather Conditions.” This includes all option papers, whether authored by EPA Office of Wastewater Management personnel or other(s).
8. ALL DOCUMENTS associated with the September 12, 2002 response letter written by G. Tracy Mehan to the Honorable Doug Ose including, but not limited, to all drafts, comments, and the sign-off page(s) pertaining to such documents.
9. ALL DOCUMENTS associated with cost estimates undertaken by or for EPA (*e.g.*, by an EPA contractor) or submitted to EPA pertaining to the costs municipalities would incur if there is a prohibition on blending or if blending must meet bypass rule restrictions to be approved (*e.g.*, no feasible alternatives test). This includes, but is not limited, to all drafts and comments, work orders, scopes of work, and related documents describing the need for such analyses.
10. ALL DOCUMENTS associated with cost estimates undertaken by or for EPA (*e.g.*, by an EPA contractor) or submitted to EPA identifying or estimating the number of POTWs that (a) blend wastewater, (b) are specifically authorized by an NPDES permit to blend, (c) have received a Clean Water Act

grant to fund the construction of a treatment plant that blends; or (d) have requested approval to blend.

11. ALL DOCUMENTS identified in the enclosure entitled “List of Withheld Documents” to EPA Region III’s May 14, 1999 response to FOIA Request 03-RIN-01133-99 signed by W. Michael McCabe in response to a FOIA request by Hall & Associates dated March 26, 1999.

12. ALL DOCUMENTS associated with the EPA Headquarters’ document entitled “Recombination/Blending of Peak Wet Weather Flows at POTWs” provided as a handout on or about March 2001, by the Office of Wastewater Management at a meeting of EPA Headquarters and Regional Branch Chiefs. This request includes, but is not limited to, all drafts and comments on the draft, as well as any comments received on the document at or after the Branch Chiefs’ meeting.

13. ALL DOCUMENTS associated with the issue of whether satellite treatment facilities (*e.g.*, peak excess flow treatment facilities) constructed to treat only peak weather flows can be issued an NPDES permit and the requirements such facilities must meet. This includes, but is not limited, to documents generated by EPA Regions.

14. ALL DOCUMENTS associated with the issue of whether secondary treatment as provided by 40 C.F.R. Part 133 mandates the use of biological treatment or allows other type of treatment (*e.g.*, physical/chemical treatment). This includes, but is not limited, to documents generated by EPA Regions.

15. ALL DOCUMENTS associated with the issue of whether emergency discharge outfalls located within a sanitary sewer system can be issued an NPDES permit. This request includes, but is not limited, to Regional policies, comments, or other communications whether to other personnel with the EPA Region, EPA Headquarters, States, permittees or to others pertaining to such issue.

16. ALL DOCUMENTS associated with the issue of whether sanitary sewer overflows (SSOs) are subject to permitting standards based upon secondary treatment, BAT, BCT, or some other standard. This includes, but is not limited, to EPA Regional policies, comments, or other communications whether to other personnel with the EPA Region, EPA Headquarters, States, permittees or to others pertaining to such issue.

17. ALL DOCUMENTS in the possession of EPA Region VI, the U.S. Attorney's Office, and EPA Headquarters regarding (a) the previously threatened criminal prosecution of the Little Rock Wastewater Utility based upon the alleged failure to report blending events as unlawful bypasses and (b) the subsequent decision

of the U.S. Attorney's Office to drop prosecution of that claim after further discussion with EPA Headquarters.

Respectfully submitted,

/S/

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/S/

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Dated: October 18, 2002