

NOTE TO READERS:

The Administrator signed the following Notice of Proposed Rulemaking on January 4, 2001, and EPA has submitted it for publication in the *Federal Register*. While the Agency has taken steps to ensure the accuracy of this Internet version of the rule, it is not the official version of the rule for purposes of public comment. Please refer to the official version in a forthcoming *Federal Register* publication or on the Government Printing Office's Web Site. You can access the *Federal Register* at: [http://www.access.gpo.gov/su\\_docs/aces/aces140.html](http://www.access.gpo.gov/su_docs/aces/aces140.html). Once GPO publishes the official *Federal Register* version of the rule, EPA will provide a link to that version at its web site.

## VII. COST-BENEFIT ANALYSIS

EPA has determined that the benefits of today's proposal justify the costs, taking into consideration qualitative as well as quantitative benefits and costs. The estimated monetized costs range from \$93.5 million to \$126.5 million annually while the corresponding monetized benefits range from \$36 million to \$97 million annually.

The proposed rule's cost and benefits estimates are annualized and presented in 1999 dollars. EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements in the proposal. These estimates, including descriptions of the methodology and assumptions, are described in detail in the Economic Analysis of the Proposed Regulations Addressing NPDES Permit Requirements for Municipal Sanitary Sewer Collection Systems and Sanitary Sewer Overflows, which is included in the record of this proposed rule making. Table 17 summarizes the costs and benefits associated with today's proposal.

Table 17 - Comparison of Annualized Benefits to Costs for the Municipal Sanitary Sewer Collection System and SSO Proposed Rule

Monetized Benefits <sup>1</sup>	Low (\$ Million)	High (\$ Million)
Water Quality Benefits	\$ 12	\$ 73
Improved O&M/MOM Program	\$ 24	\$ 24
<b><i>ESTIMATED BENEFITS</i></b>	<b><i>\$ 36</i></b>	<b><i>\$ 97</i></b>
Costs	Low (\$ Million)	High (\$ Million)
Municipalities	\$ 93	\$ 126
State/ Federal Administration	\$ 0.5	\$ 0.5
<b><i>ESTIMATED COSTS</i></b>	<b><i>\$93.5</i></b>	<b><i>\$126.5</i></b>

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<sup>1</sup>Additional benefits, which have not been monetized, can be expected to result from the regulation.

#### A. Baseline

In developing today's proposal, EPA estimated the incremental costs and benefits associated with implementing the proposed regulations. This analysis estimated the incremental difference in costs and benefits between implementing the proposed regulations and baseline of implementing the existing NPDES regulations. The baseline used in estimating costs and benefits associated with today's proposal is consistent with EPA's interpretation of the existing NPDES regulations which prohibit discharges to waters of the U.S. from municipal sanitary sewer collection systems except for in very limited circumstances.

In addition, for information purposes, EPA has estimated costs and benefits associated with abating SSOs. Results of those analyses are presented in the draft Sanitary Sewer Overflow (SSO) Needs Report and Benefits of Measures to Abate Sanitary Sewer Overflows (SSOs). EPA estimates that the costs of achieving various SSO control objectives, ranging from one wet-weather SSOs per year to one wet-weather SSO every five years, and a reduced number of unavoidable dry-weather SSOs, range from \$6.9 billion to \$9.8 billion, while the benefits associated with eliminating all SSOs range from \$1.07 billion to \$6.07 billion. (Note that these costs and benefits estimates are not comparable because EPA has not estimated the marginal benefits associated with increasingly stringent control objectives, nor estimated the costs associated with eliminating all SSOs)

Today's proposal provides for a more efficient approach to controlling SSOs through better management, increased public notice and increased focus on system planning. EPA believes that the improved planning and management envisioned in today's proposal will result in fewer overflows. In estimating the portion of benefits from SSO abatement attributable to today's proposal, EPA has used a standard accounting principle to select a range of 1.2 percent to 1.4 percent of total benefits as an indicator of improved system performance from implementation of today's proposal. In addition, EPA believes that this rule may accelerate the pace of investments made in municipal sanitary sewer systems. 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.

#### B. Costs

EPA estimates that there are about 19,000 municipal systems that will be potentially regulated by today's proposal. Costs of the proposed new requirements were estimated by identifying specific compliance tasks associated with regulatory requirements for municipalities or oversight authorities. Estimates were developed based on the unit cost associated with each task and how frequently that task is expected to be accomplished. In most cases, available data indicated that the unit cost and/or the frequency with which the task must be performed increased with the size of the collection system. Ultimately, the nationwide total cost for a provision was calculated by multiplying the per-system cost for communities of a given size range by the number of potentially regulated systems in that size range and then aggregating across the nation. The cost estimates were adjusted to reflect instances in which some or all communities may already be performing an action in advance of Federal requirements. For such communities, no incremental costs are expected to result from compliance with today's proposal. A detailed description of these assumptions and the resulting cost estimates is reflected in Appendices B and C of the Economic Analysis accompanying this proposal. Both one-time (primarily capital costs) and annual (ongoing) costs are estimated and then combined through an annualization procedure to reflect the estimated costs of the proposal. EPA

estimates that annual compliance costs for both municipalities and State/Federal oversight agencies will range from \$93.5 million to \$126.5 million.

The cost estimates reflect assumptions about the timing and applicability of the proposed new requirements. The proposed new standard permit conditions will only become applicable to a permittee when they are added to a permittee's permit. EPA assumed this will occur during the normal permit renewal process beginning after EPA takes final action. NPDES permits have a five-year permit term and nationally, permit expirations and renewals are assumed to occur at an even pace over each five-year period. The cost estimates also reflect the flexibility offered by the proposal. Permits can establish deadlines for compliance with various CMOM documentation requirements. Cost estimates assumed that these requirements were phased in accordance with the timing guidance in today's preamble (section III.L.3). Under this guidance, permits for smaller sanitary sewer collection systems would provide 1 to 5 years after a requirement is written into their permit for completion of various documentation requirements. The cost estimates also reflect waiving some requirements for systems that show an exemplary performance record; for example, a collection system with an average daily flow of 2.5 million gallons per day or less would not have to conduct an audit or prepare a written CMOM program summary unless it had an SSO that led to a discharge to waters of the United States. EPA estimates that up to 66 percent of communities with less than 25,000 population will qualify for this waiver, saving on average \$2,557 per municipality.

### C. Monetized Benefits

EPA also estimated the benefits associated with today's proposal. The proposed rule adds new administrative and procedural requirements and clarifies existing requirements, thus making it more certain that the existing prohibition on unauthorized discharges, specifically SSOs, will be achieved. Provisions addressing reporting and public notification will assure mitigation of potential public health impacts from SSOs, while provisions addressing information collection, planning, and analysis will help to improve decision-making. Implementation of a CMOM program is expected to increase efficient planning, operations and maintenance resulting in improved system management. In estimating the benefits for this proposal, EPA was able to partially monetize two major categories of benefits, water quality benefits and benefits associated with improved system planning and O&M (or MOM) programs.

#### 1. Water Quality Benefits

Compliance with the existing standard and today's proposal will require that systems address both infrastructure costs related to the existing standard and these new provisions which improve planning, operations and maintenance of systems, in order to achieve the benefits of fewer SSOs and improved water quality. Therefore, in calculating the water quality benefits of today's proposal, EPA attributed to this proposal the share of total SSO reduction and water quality benefits equal to the proportion of the costs of this proposal to the total costs of SSO abatement.

The monetized water quality benefits of SSO abatement have been estimated in the Benefits of SSO Abatement Report as \$0.95 to \$5.4 billion annually. The cost of investments by sanitary sewer collection systems to increase capacity and improve maintenance as necessary to abate virtually all SSOs is estimated in the SSO Needs Report as \$6.9 billion (for a control objective of one wet weather SSO event per year) to \$9.8 billion annually (for a control objective of one wet weather SSO event every five years). The incremental costs of this proposed rule, which is part of achieving SSO abatement, total \$93.5 to \$126.5 million annually. The proposed rule thus accounts for 1.2 to 1.4 percent of the total costs for sanitary sewer system infrastructure improvement. While the total benefits estimated in Benefits of SSO Abatement, are \$1.07 to \$6.1 billion, a portion of those are system benefits which are not affected by this rule. System benefits reflect eventual cost savings for

collection systems as a result from increased spending on system maintenance. If a similar share of the estimated \$0.95 to \$5.4 billion in quantified water quality benefits of achieving SSO abatement is allocated to this rule, the estimated monetized water quality benefits range from \$12 to \$73 million annually.

## 2. Improved O&M Program Benefits

Today's proposal also creates benefits in the form of cost savings for municipal sanitary sewer collection systems associated with better, more targeted, more efficient operation and maintenance programs. This separate set of benefits is derived exclusively from the proposed rule and is obtained independent of the additional investment in collection system infrastructure needed for SSO abatement. The proposal encourages collection systems to redirect their existing O&M programs to optimize system efficiency and effectiveness. Benefits will result in the form of reductions in total spending on collection system operations and maintenance.

Municipal sanitary sewer collection systems currently spend an average of about \$1.6 billion annually on operations and maintenance and the draft SSO Needs Report estimates that an additional \$1.5 billion will be needed to minimize dry weather SSOs. Applying the findings of the Water Environment Research Foundation's 1997 collection system benchmarking study, it is estimated that "smarter" O&M practices as prompted by the proposed regulation could reduce total collection system operating costs by 0.77 percent. Based on both current O&M costs and the additional O&M costs identified in the draft SSO Needs Report, this results in an estimated national cost savings of about \$24 million annually. "Smarter" O&M programs may also result in the longer term in as-yet-unquantified opportunities for savings in capital investments.

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1932.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); Ariel Rios Building; 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260-2740. A copy may also be downloaded off the Internet at <http://www.epa.gov/icr>.

The ICR presents paperwork burden and cost estimates associated with EPA's proposed NPDES regulations for municipal sanitary sewer systems and SSOs for the three-year period immediately after the regulation is promulgated. The proposed regulations would establish, under authority of CWA sections 308(a)(1) and 304(i), mandatory recordkeeping, reporting, public notification, planning, and permit application requirements with resulting paperwork burdens and costs. Information provided through compliance with these requirements will improve the ability of NPDES authorities to assess permittee compliance, mitigate public health impacts from SSOs, and assess the status of collection system performance (including funding needs) on a national scale. Members of the public, including citizens and environmental groups, will use the information provided to understand and reduce the risks from SSO events. The data required under this information collection request are not confidential.

EPA estimates that there are about 19,000 collection systems would ultimately be affected by the proposed regulations. The 19,000 collection systems include 4,800 municipal satellite collection systems. The ICR assumes that, for the five year period following promulgation of regulations, one-fifth of all collection systems would have new standard permit conditions added to their permits.

In addition, 43 States and 1 Territory are authorized to administer the NPDES permitting program and would thus implement the proposed regulations. Nationally, these respondents would spend an average total of 86,462 hours per year for the three year period following promulgation of a final rule to meet the paperwork-related requirements of the proposed regulations. The recordkeeping and reporting burden includes time and resources for making 24-hour reports and 5-day follow-up reports; complying with paperwork-related provisions of the CMOM program (including program development); and complying with public notification requirements. The Agency is assuming that these requirements will be added to permits for 3,808 collection systems per year for each of the three years following promulgation of final regulations. The Agency makes additional assumptions regarding when various requirements become effective for permittees. Agency burden is estimated as 1,675 hours per year. Each respondent would spend an average of 7.5 hours per year to report and keep records of information required by the proposed SSO regulations, while States will on average spend 138 hours per year. Annualized capital/startup costs for equipment necessary to facilitate and manage the information collection would be approximately \$1,731,164 per year and operating and maintenance costs would be \$4,056,848 per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information; processing and maintaining information, and disclosing and providing information; adjusting the existing ways to comply with any previously applicable instructions and requirements; training personnel to be able to respond to a collection of information; searching data sources; completing and reviewing the collection of information; and transmitting or otherwise disclosing the information.

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. Send comments on the ICR to the Director of Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after **[insert date of publication in the FEDERAL REGISTER]**, a comment to OMB is best assured of having its full effect if OMB receives it by **[insert date 30 days after date of publication in the FEDERAL REGISTER]**. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### B. Executive Order 12866

Under Executive Order 12866 [58 Federal Register 51735 (October 4, 1993)], the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- (1) have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;
- (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

#### C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments,



enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has developed a small government agency plan for this proposed rule in accordance with section 203. The plan describes the notification and consultation efforts EPA has used and will continue to use through its information network, small government outreach group, and Federal Advisory Committee and SSO subcommittee to notify small governments, Tribes, and other small entities and seek input on how EPA can assist them with guidance materials and compliance assistance. The plan describes EPA's compliance assistance "toolbox" and discusses how the information will be disseminated.

EPA has determined that this rule contains a Federal mandate that may result in expenditures of \$100 million or more for State, local, and tribal governments, in the aggregate, in any one year. Accordingly, EPA has prepared under section 202 of the UMRA a written statement which is summarized in the following sections.

#### 1. Statutory Authority

EPA proposes today's municipal sanitary sewer collection system and SSO regulation pursuant to Clean Water Act sections 301, 304(i), 308, 402, and 501(a). This proposal is in direct response to a Presidential directive to develop "a strong national regulation to prevent the over 40,000 annual sanitary sewer overflows from contaminating our nation's beaches and jeopardizing the health of our nation's families." Today's rule is not otherwise subject to a statutory or judicial deadline.

This proposal would improve management and maintenance of municipal sanitary sewer collection systems, reducing releases of raw sewage, which have significant health and environmental risks. In addition, sanitary sewer collection systems represent a major infrastructure investment for the nation. These systems typically represent the largest infrastructure assets in a community. This proposal is designed to protect the significant national investment by enhancing management, operation and maintenance of these systems.

#### 2. Summary of Qualitative and Quantitative Cost-Benefits Analysis:

In the Economic Analysis of Proposed Regulations Addressing NPDES Permit Requirements for Municipal Sanitary Sewer Collection Systems and Sanitary Sewer Overflows (EA), EPA describes the qualitative and monetized benefits associated with today's proposal and then compares the monetized benefits with the estimated costs of the proposal. EPA developed detailed estimates of the costs and benefits of complying with each of the incremental requirements that would be imposed by the rule. These estimates, including descriptions of the methodology and assumptions used, are described in detail in the EA. The estimated monetized costs range from \$ 93.5 million to \$126.5 million annually; of this amount, Federal, State, and Tribal governments would bear \$0.5 million and municipalities the remainder. The corresponding monetized benefits range from \$36 million to \$97 million annually.

The Agency estimated two main categories of benefits from this proposal, water quality benefits and enhanced system planning and operation benefits. EPA has determined that the benefits of today's would proposal justify the costs, taking into consideration qualitative as well as quantitative benefits and costs. Some benefits from SSO control were not monetized, such as improved aesthetic quality of waters, benefits to wildlife and to threatened and endangered species, cultural values, and biodiversity benefits. Table 17 in Section VII of this preamble summarizes the costs and benefits associated with the basic elements of today's proposal.

Although Congress has not established a fund to fully finance implementation of this proposed rule, some Federal financial assistance is available for limited purposes. The primary funding mechanism under the CWA is the Clean Water State Revolving Fund (SRF) program, which provides low-cost

financing for a range of water quality infrastructure projects, including certain projects related to sanitary sewer systems. (See Section I.J of today's preamble for additional discussion.) In addition to the SRF, Federal financial assistance programs include the Water Quality Cooperative Agreements under CWA section 104(b)(3) to support the creation of unique and innovative approaches to address requirements of the NPDES program, including SSOs. These funds can be used to conduct special studies, demonstrations, and outreach and training efforts, which will enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds. EPA will develop a list of potential funding sources as part of the toolbox implementation effort.

### 3. Macro-Economic Effects

In the economic analysis, EPA reviewed the expected effect of today's proposal on the national economy. The Agency determined that the proposal would have minimal impacts on the economy or employment. This is because this proposal is estimated to cost \$93.5 million to \$126.5 million annually, which is a small percentage of the national economy. Macro-economic effects tend to be measurable only if the economic impact of a regulation reaches 0.25 to 0.5 percent of Gross Domestic Product (in the range of \$1.5 billion to \$3 billion). In addition, this proposal would regulate municipalities, States, and EPA, not the typical industrial plants or activities that could directly impact production and thus those sectors of the economy.

EPA concludes that the effect of the proposal on the national economy, if any, would be minimal. The benefits of the proposal more than offset any potential cost impacts on the national economy.

### 4. Summary of State, Local and Tribal Input

Consistent with the intergovernmental consultation provisions of section 204 of the UMRA, EPA has already initiated consultation with the governmental entities affected by this rule. Today's proposal has been developed in conjunction with consultation activities that provided public input on potential approaches, including input from a Subcommittee to a Federal Advisory Committee, a small government outreach group, and representatives of authorized NPDES State programs and Tribes.

SSO Subcommittee of Urban Wet Weather Federal Advisory Committee Between 1994 and 1999, the SSO Subcommittee of the Urban Wet Weather (UWW) Federal Advisory Committee met 12 times to provide input on how best to meet the SSO policy challenge. The SSO Subcommittee was comprised of representatives from a balanced group of stakeholders. Stakeholder organizations represented on the SSO Subcommittee include organizations representing elected local government officials (National Association of Counties, National Association of Towns and Townships, and National League of Cities); public works and sewer district officials (American Public Works Association, Association of Metropolitan Sewerage Agencies, Texas Association of Metropolitan Sewerage Associations, and Tri-TAC); State officials (Association of State and Interstate Water Pollution Control Administrators and National Association of Attorneys General); and State and local health agencies (National Environmental Health Association).

Between 1994 and 1999 the Agency explored a range of SSO issues with the SSO Subcommittee. Members reached general agreement on several important issues, such as the risks posed by SSOs, the need to eliminate avoidable SSOs, the need for proper operation and maintenance to preserve the value of the collection system infrastructure, and the need for regulatory agencies to develop a regulatory framework sensitive to real-world conditions. The Subcommittee developed a consensus document, entitled "SSO Management Flow Chart," outlining a potential approach for planning SSO management strategies, and it developed and discussed a series of issue papers, draft permit conditions, and draft guidance documents. The Subcommittee kept the UWW Federal Advisory Committee apprised of its activities. Information from these discussions was considered in developing the approach proposed today.

Municipalities and States raised major concerns and comments about the need for greater national clarity and consistency in the way NPDES requirements apply to SSOs. Particular concerns were raised regarding the legal liability for SSO discharges that would be considered beyond the reasonable control of an operator/permittee. Some State and municipal representatives noted that they believed different NPDES authorities were interpreting the applicability of the bypass and upset provisions (at 40 CFR 122.41(m) and (n)) to SSOs differently. Others noted that different treatment standards had been used to either issue permits for or disallow infrequent discharges from peak excess flow treatment facilities. The States and municipalities indicated that greater clarity and consistency would help ensure that enforcement actions under the CWA were consistent with engineering realities and the health and environmental risks of SSOs.

States. As part of the consultation with States, EPA included authorized NPDES State representatives on the Agency work group. EPA included representatives from 13 authorized NPDES State programs to provide input on SSO issues to the Agency. State representatives participated on the Agency work group from 1994 to October 1999. As part of that process, EPA discussed the proposed rulemaking, provided copies of the relevant documents, and notified all work group representatives that updated information on the proposed rule would be available on the SSO page on the Office of Wastewater Management (OWM) web site. In addition to this participation, as discussed above, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) had two representatives on the SSO Subcommittee. In addition to participating in the SSO Subcommittee, ASIWPCA provided comments to EPA from Vermont, South Carolina, Florida, and Nevada.

Most authorized NPDES State representatives participating on the Agency's work group raised concerns that permit requirements should not adversely impact the State's ability to enforce against violations. Some State representatives raised concerns about workability of the approach and implementation burdens on authorized NPDES State programs. Some raised concerns about the regulatory framework for issuing permits for discharges from peak excess flow treatment facilities. Some States raised concerns about the potential burden annual reporting requirements for permittees would place on the States. These concerns were also generally reflected by representatives on the SSO Subcommittee. Additional implementation concerns were raised by representatives of other States and are summarized in section I.E.3. These concerns included the amount of flexibility States would have, timing of requirements, and burdens on States.

The Agency believes that the proposed approach satisfactorily addresses the majority of concerns raised by the SSO Subcommittee, as well as municipal elected officials and other State and local government stakeholders and some of their representative national organizations.

In October, 1999, the SSO Subcommittee unanimously supported, when taken as a whole and recognizing that they are interdependent, basic principles in a draft approach for clarifying and establishing NPDES permit requirements for municipal sanitary sewer collection systems. The attached proposed rulemaking is consistent with the principles unanimously supported by the SSO Subcommittee. The State and local representatives on the SSO Subcommittee, through their support of the basic principles, demonstrated their acceptance of the proposal as addressing their concerns as much as possible.

Two provisions of today's proposal specifically address concerns raised by representatives of small communities:

- A collection system with an average daily flow of less than 2.5 million gallons per day (mgd) would not be required to develop a written CMOM program summary or a CMOM program audit until it experiences an SSO discharge to waters of the United States from its collection system; and
- The CMOM standard permit condition could be less detailed in permits for municipal sanitary sewer collection systems with an average daily flow of less than 1 mgd.

EPA believes that the approach proposed today, including the CMOM approach, the special requirements for small collection systems, language regarding enforcement protection from overflows that are beyond an operator's reasonable control, and the guidance on timing of implementation of CMOM requirements, adequately strikes a balance between concerns raised by State representatives and the need to address the SSO problem. The Agency is proposing standard permit conditions, which should significantly decrease the burdens on authorized NPDES States to write permit conditions, relative to solely giving guidance to the States regarding how permit conditions should be established. At the same time, EPA recognizes that this would reduce somewhat the flexibility of the permit writer to address site-specific circumstances, but believes it provides needed national consistency. EPA believes such an approach would not significantly constrain the flexibility of the permit writer to address site-specific circumstances. The Agency is also developing a toolbox of items to help municipalities and States implement requirements in an effective and cost-efficient manner (see section II.C).

Tribes. Regarding consultation with Tribal Governments, EPA discussed the proposed rule with the Tribal Operations Caucus on a conference call on November 9, 1999. The Tribal Operations Caucus consists of 20 Tribes which represent the 565 recognized Tribes. In addition to the conference call, EPA provided copies of decision memos and draft regulatory language related to the proposed rulemaking for review and transmittal to all of the 565 recognized Tribes. No oral or written comments have been received from the Caucus or individual Tribes.

#### 5. Selection of Least Costly, Most Cost-Effective or Least Burdensome Alternative that Achieves the Objectives of the Statute

EPA considered a number of alternatives in addressing municipal sanitary sewer collection systems. Today's proposal evolved over time and incorporated aspects of alternatives that responded to concerns presented by various stakeholders. EPA considered five alternatives. The first alternative would be to adopt a more prescriptive capacity, management, operation, and maintenance provision. The second alternative would involve extending the requirements of the proposed rule to privately owned satellite collection systems. The third alternative would be to change the technology-based standard for discharges from sanitary sewers from secondary treatment to best available technology economically achievable (BAT)/ best practicable control technology currently available (BCT). The fourth alternative is a no action alternative. The fifth alternative is the proposed approach.

The Agency compared the estimated annual range of costs imposed under today's proposal to the other major alternatives considered. The cost of today's proposal is estimated to range from \$93.5 million to \$126.5 million annually. Alternatives one and two generally involved higher regulatory costs and therefore were not selected. Alternative three would provide savings of \$126 million per year. However, the approach may for some municipalities result a relaxation in regulatory standards that results in more discharges at treatment levels that are less than established in the secondary treatment regulations or to delays in remedial action to address existing SSOs. For these reasons, EPA believes the chosen alternative is more appropriate than alternative three. In the case of the No Action Alternative, the Agency determined that such an alternative would not meet the goals of today's proposal in addressing SSOs, improving system management and clarifying existing regulations. A detailed analysis of these alternatives is included in the Economic Analysis that accompanies today's proposal.

Today's proposal reflects input from a number of State and municipal governments. It satisfies the requirement under UMRA that the Agency consider a number of regulatory alternatives and adopt "the least costly, most cost-effective, or least burdensome alternative that meets the objectives of the statute." EPA has selected the least costly alternative which meets the Agency's interpretation of the Clean Water Act. A cost comparison shows that alternatives one and two are substantially more costly (\$278 million to \$1.1

billion) than the approach proposed. The Agency believes that alternatives three and four would not meet the objectives of the Clean Water Act.

Small Government Consultation: In developing this rule, EPA consulted with small governments pursuant to its plan established under section 203 of the UMRA to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. In addition to the consultation with small government representatives on the SSO subcommittee, as described in section VIII.C.4, in the spring of 1999 EPA identified a number of potential participants for a Small Government Outreach Group related to the proposed SSO rule. Twenty-one individuals, representing communities from across the country, with populations of 50,000 or less were invited to participate; fourteen accepted. EPA held eight conference calls with the group between July and November 1999. The primary concerns raised by participants to the Small Government Outreach Group were:

- a. In general, the principles behind the CMOM provisions are good basic guidelines. However, a number of the representatives on the outreach group raised concerns regarding the amount of paperwork associated with the draft CMOM provisions. Some commentors recommended that paperwork and administrative requirements associated with CMOM programs should only be required of governments that currently do not have well performing systems. Some felt that small governments who are currently undertaking aggressive programs do not have resources to add new staff for new program requirements. These commentors thought existing staff would have to be pulled off current day-to-day responsibilities in order to comply with the draft CMOM permit provision, resulting in less effective municipal programs. Most municipal representatives supporting this view thought the test for a well performing system should be "no SSOs" within the preceding few years. Others felt that even well-operated collection systems may experience periodic SSOs and that a "no SSO" test would be unrealistic.
- b. Some small government representatives indicated that some of the language of the draft permit provisions should be clarified and not open to enforcement discretion. They were concerned about the potential for inconsistent application. Specific concerns focused on the following issues:
  - ▶ How a small municipality can identify CMOM program elements that are "appropriate and applicable";
  - ▶ The capability of small municipalities to identify adequate capacity to convey peak flows;
  - ▶ Clarifying how "adequately enlarging" treatment systems would be seen as an example of reasonable control in the context of the prohibition and defense; and
  - ▶ Clarifying the terms "severe natural conditions" and "all feasible alternative" in the prohibition on SSO discharges.
- c. The CMOM program should be phased in over a minimum of three years.
- d. The CMOM provisions identified in the rule should be considered as guidelines rather than specific mandatory requirements.
- e. Some small government representatives were concerned that the draft prohibition provision could be interpreted by EPA officials as being more stringent than what some States required. Uncertainty was a particular concern for municipalities working under a State enforcement order because EPA can require retrofits to system expansions that have been recently completed or are underway. Others felt that the vague language in the draft approach would create uncertainty in future negotiations with States on design requirements for their collection system.
- f. Given the unpredictable nature of SSO events, the real health and environmental benefits from trying to eliminate all SSOs are small in comparison to the costs of compliance.
- g. Municipal dollars for addressing water quality issues are limited. It is not clear from a water quality or regulatory perspective that municipalities should give SSO control a higher priority than areas such as storm water, treatment plant improvements, or compliance with TMDLs. Watershed approaches or unifying wet weather requirements may provide a better basis for

establishing priorities.

As a result of EPA's discussions with the SSO Subcommittee and the Small Government Outreach Group, the Agency added two provisions to the proposal to specifically address the needs of small communities:

- \$ A collection system with an average daily flow of less than 2.5 million gallons per day (mgd) would not be required to develop a written CMOM program summary or a CMOM program audit until it experiences an SSO discharge to waters of the United States from its collection system. An average daily flow of 2.5 mgd is roughly equivalent to a residential service population of about 25,000 people.
- \$ The CMOM standard permit condition could be less detailed in permits for municipal sanitary sewer collection systems with an average daily flow of less than 1 mgd. An average daily flow of 1 mgd is roughly equivalent to a residential service population of about 10,000 people.

#### D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have federalism implications because it may impose substantial direct compliance costs on State and local governments, and the Federal government will not provide the funds necessary to pay those costs. As discussed in section IV.C., the proposed rule contains a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, of \$100 million or more in a year and the Federal government will not provide the funds necessary to pay those costs. Accordingly, EPA provides the following federalism summary impact statement (FSIS) as required by section 6(b) of Executive Order 13132.

EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development.

#### 1. Description of the Extent of the Agency's Prior Consultation with State and Local Governments

Today's proposal has been developed in conjunction with consultation activities that provided public input on potential approaches, including input from a Subcommittee to a Federal Advisory Committee, a small government outreach group, and representatives of authorized NPDES State programs. Section VIII.C of this preamble discusses EPA's outreach efforts under the Unfunded Mandates Reform Act, including consultation with State and local elected officials.

Between 1994 and 1999, the SSO Subcommittee met 12 times to provide input on how best to meet the SSO policy challenge. The SSO Subcommittee comprised representatives from a balanced group of stakeholders. Stakeholder organizations represented on the SSO Subcommittee included organizations representing local elected officials (National Association of Counties, National Association of Towns and Townships, and National League of Cities). It also included representatives of local officials, some of whom are appointed by elected officials (American Public Works Association, Association of Metropolitan Sewerage Agencies, Association of State and Interstate Water

Pollution Control Administrators, and the national Association of Attorneys General).

In the spring of 1999, EPA identified a number of potential participants for a Small Government Outreach Group related to the proposed SSO rule. Twenty-one individuals, representing communities from across the country, with populations of 50,000 or less were invited to participate; fourteen accepted. EPA held eight conference calls with the group between July and November 1999.

Representatives from 13 authorized NPDES State programs participated in an Agency work group that provided input on SSO issues to the Agency from 1994 to October 1999. As part of that input, the Agency work group reviewed draft regulatory proposals.

EPA distributed written materials describing the approach supported by the SSO Subcommittee at the National Conference of State Legislatures (NCSL) annual meeting in May 2000. The materials described how members of NCSL could provide comments on the approach to EPA.

For rules that the Agency determines may have federalism implications, EPA has committed to consulting with the National Association of Towns and Townships, the Country Executives of America, as well as with the seven national organizations often referred to as the "Big 7" and their national chairperson. The Big 7 is comprised of the National Governor's Association, National Conference of State Legislatures, U.S. Conference of Mayors, National League of Cities, Council of State Governments, International City/County Management Association, and National Association of Counties. These nine organizations offer the largest constituencies of elected and senior appointed officials in state and local government and are considered "representative national organizations" for purposes of the E.O. 13132. As noted above, three organizations (National Association of Counties, National Association of Towns and Townships, and National League of Cities), were represented on the SSO Subcommittee, and EPA consulted directly with the National Conference of State Legislatures. During the public comment period, EPA will consult with the five remaining organizations. Consultation with these organizations will be in addition to consultations between EPA and individual state and local officials. During these consultations, EPA will answer any questions regarding what the proposed rule would accomplish if promulgated, the rule's quantitative and qualitative costs and benefits, and flexibility to accommodate local conditions or circumstances, and the effect on existing State and local authorities. EPA will also solicit input from State and local officials regarding any concerns they may have and potential ways of addressing those concerns.

## 2. Summary of the Nature of State and Local Government Concerns

Over the course of the twelve meetings held by the SSO Subcommittee, participants discussed a number of issues pertaining to the need for national clarity and consistency in the way NPDES requirements apply to SSOs.

Representatives of municipal organizations, including local elected officials, raised the following concerns:

- \$ The legal liability for SSO discharges that would be considered beyond the reasonable control of an operator/permittee. These representatives noted that they believed different NPDES authorities were interpreting the applicability of the bypass and upset provisions (at 40 CFR 122.41(m) and (n), respectively), inconsistently to SSOs.
  - \$ Different treatment standards had been used to either issue permits for or disallow infrequent discharges from peak excess flow treatment facilities.
  - \$ Greater clarity and consistency would help ensure that enforcement actions under the CWA were consistent with engineering realities and the health and environmental risks of SSOs.
- Representatives of small communities raised the following concerns:
- \$ Paperwork and administrative requirements associated with the CMOM programs should only be required of governments that do not have well performing systems

- \$ Permit provisions should have clear requirements and not be open to enforcement discretion
- \$ The prohibition provision could be interpreted by EPA officials as being more stringent than what some States required. Municipalities working under a State enforcement order could be required to retrofit system expansions that have been recently completed or are underway
- \$ Given the unpredictable nature of SSO events, the real health and environmental benefits from trying to eliminate all SSOs are small in comparison to the costs of compliance.

Representatives of authorized NPDES States also participated on the SSO Subcommittee and raised a number of concerns:

- \$ Whether States would be given flexibility to use their existing requirements in lieu of the proposed requirements;
- \$ That the level of detail in EPA's draft regulations may limit flexibility in how the proposed requirement would be applied;
- \$ Timing issues associated with initial implementation of the proposed requirements;
- \$ The extent of reporting that would be required under the proposed regulation; and
- \$ Whether the approach sufficiently targeted priority municipalities.

Several States supported the general concepts behind the approach and elements to the draft provisions. Several States raised concerns that the draft capacity, management, operation and maintenance (CMOM) provision may be beyond the capability of most smaller municipalities. Several suggested that EPA consider targeting these requirements to municipalities with identified problems. One State indicated that the approach may damage its relationship with municipal permittees, which could in turn cause negative impacts in implementing environmental programs.

### 3. Summary of the Agency's Position Supporting the Need to Issue the Regulation.

SSOs result in releases of raw sewage that can create serious health and environmental risks. With today's proposal, EPA is responding to President Clinton's May 29, 1999, directive to: "Improve protection of public health at our Nation's beaches by developing, within one year, a strong national regulation to prevent the over 40,000 annual sanitary sewer overflows from contaminating our nation's beaches and jeopardizing the health of our nation's families." The proposed framework would protect public health and provide information to communities about health risks and water quality problems caused by SSOs. The current poor performance of the nation's municipal sanitary sewer collection systems indicates a need to increase regulatory oversight in order to protect and enhance the nation's collection system infrastructure. The sewer collection system typically represents one of the largest infrastructure assets in a community.

### 4. Extent to Which the Officials' Concerns Have Been Met

The Agency believes that the proposed approach satisfactorily addresses the majority of concerns raised by the SSO Subcommittee, as well as municipal elected officials and other State and local government stakeholders and some of their representative national organizations.

In October, 1999, the SSO Subcommittee unanimously supported, when taken as a whole and recognizing that they are interdependent, basic principles in a draft approach for clarifying and establishing NPDES permit requirements for municipal sanitary sewer collection systems. The attached proposed rulemaking is consistent with the principles unanimously supported by the SSO Subcommittee. The State and local representatives on the SSO Subcommittee, through their support of the basic principles, demonstrated their acceptance of the proposal as addressing their concerns as much as possible.

Two provisions of today's proposal specifically address concerns raised by representatives of small communities:



- \$ A collection system with an average daily flow of less than 2.5 million gallons per day (mgd) would not be required to develop a written CMOM program summary or a CMOM program audit until it experiences an SSO discharge to waters of the United States from its collection system; and
- \$ The CMOM standard permit condition could be less detailed in permits for municipal sanitary sewer collection systems with an average daily flow of less than 1 mgd.

EPA believes that the approach proposed today, including the CMOM approach, the special requirements for small collection systems, language regarding enforcement protection from overflows that are beyond an operator's reasonable control, and the guidance on timing of implementation of CMOM requirements, adequately strikes a balance between concerns raised by State representatives and the need to address the SSO problem. The Agency is proposing standard permit conditions, which should significantly decrease the burdens on authorized NPDES States to write permit conditions, relative to solely giving guidance to the States regarding how permit conditions should be established. At the same time, EPA recognizes that this would reduce somewhat the flexibility of the permit writer to address site-specific circumstances, but believes it provides needed national consistency. EPA believes such an approach would not significantly constrain the flexibility of the permit writer to address site-specific circumstances. The Agency is also developing a toolbox of items to help municipalities and States implement requirements in an effective and cost-efficient manner (see section II.C).

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

#### E. Executive Order 12898: "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations"

The requirements of the Environmental Justice Executive Order are that "EPA will... review the environmental effects of major Federal actions significantly affecting the quality of the human environment. For such actions, EPA reviewers will focus on the spatial distribution of human health, social and economic effects to ensure that agency decisionmakers are aware of the extent to which those impacts fall disproportionately on covered communities." EPA has determined that this rulemaking is economically significant. However, the Agency does not believe this rulemaking will have a disproportionate effect on minority or low income communities. The proposed regulation will reduce the negative affects of sanitary sewer overflows in all municipalities which will benefit all of society, including minority communities.

#### F. Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's proposed rule on small entities, small entity is defined as: (1) a small business, based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in

its field.

After considering the economic impacts of today's proposed rule on small entities, EPA certifies that this action will not have a significant economic impact on a substantial number of small entities. EPA has determined that this proposal will only regulate governmental jurisdictions. In addition, EPA has determined that only 927, fewer than five percent of the potentially affected small governments (i.e., municipalities), are expected to experience annual costs of more than 0.5 percent of revenues. No small governmental jurisdictions are expected to bear annual costs greater than one percent of revenues.

For purposes of evaluating the economic impact of this rule on small governmental jurisdictions, EPA used a "revenue test." This compared annual compliance costs with annual government revenues obtained from the 1992 Census of Governments, using State-specific estimates of annual revenue per capita for municipalities in three population size categories (fewer than 10,000, 10,000-25,000, and 25,000-50,000).

EPA estimates that there are about 19,000 municipalities that would be regulated by the SSO proposed rule, of which 18,595 are small municipal entities. EPA estimates that in no case would compliance costs exceed one percent of annual revenues. A sensitivity analysis estimates that only five percent of regulated small municipalities may experience cost greater than 0.5 percent but less than one percent of annual revenues. EPA concluded that this does not represent a significant economic impact on a substantial number of small entities.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on very small entities by offering targeted flexibility. Of potentially regulated municipalities, 16,359 or 86 percent have populations of less than 10,000. EPA has proposed options for flexibility for these very small municipalities in meeting certain proposed requirements. Most significantly, these municipalities would not need to file annual reports on their systems or perform systems audits, unless they have experienced an SSO discharge during their permit term. In addition, EPA engaged in outreach with potentially regulated small governments as described in Section C, UMRA.

EPA continues to be concerned about the potential impacts of the proposed rule on small entities and welcomes comments on issues related to such impacts.

#### G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104-113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking would not require the use of specific technical standards. Today's preamble does refer, however, to certain technical standards developed by a variety of consensus standards organizations that municipalities might find helpful or illustrative in developing and implementing certain provisions of the proposal. Table 15 in section III.N of this preamble lists, for reference purposes, major industry technical references, including manuals of practice and handbooks for sewer design, operation, and maintenance.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify other potentially-applicable voluntary consensus standards and to comment on whether and how the proposed

rule should "use" or otherwise rely on technical standards.

#### H. Executive Order 13045

Executive Order 13045 C "Protection of Children from Environmental Health Risks and Safety Risks" (62 F.R. 19885, April 23, 1997) C applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to E.O. 13045 because the Agency does not have reason to believe that it concerns an environmental health or safety risk that may have a disproportionate effect on children. The proposal would expand the scope of the existing NPDES permitting program to require municipally-owned sanitary sewer systems to improve operation of systems resulting in a reduction of sanitary sewer overflows. To the extent that the proposal does address a health problem that may affect children, expanding the scope of the permitting program would have a corresponding benefit to children to protect them from such problems.

#### I. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule would not significantly or uniquely affect the communities of Indian Tribal governments. Even though the Agency is not required to address Tribes under the Regulatory Flexibility Act, EPA used a similar revenue test and analysis as was used for municipalities under the RFA to assess the impact of the rule on communities of Tribal governments and determined that Tribal governments would not be significantly affected. Of the 102 reservations potentially affected by the rule, only five would be expected to experience economic impacts slightly greater than one percent of cost over revenue. In addition, the rule would not have a unique impact on the communities of Tribal governments because they are treated the same as municipal governments covered by this rule. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule. Nevertheless, EPA tried to consult with Tribal governments as outlined in section VIII.C. of the Unfunded Mandates Reform Act.

#### J. Plain Language Directive

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this proposed rule easier to understand. For example:

- \$ Have we organized the material to suit your needs?
- \$ Are the requirements of the rule clearly stated?
- \$ Does the rule contain technical language or jargon that isn't clear?

- \$ Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- \$ Would more (but shorter) sections be better?
- \$ Could we improve the clarity by adding tables, lists, or diagrams?
- \$ What else could we do to make the rule easier to understand?

**List of Subjects**

**40 CFR Part 9**

Environmental protection. Reporting and recordkeeping requirements.

**40 CFR Part 122**

Administrative practice and procedure. Confidential business information. Environmental protection. Reporting and recordkeeping requirements. Waste treatment and disposal. Water pollution control.

**40 CFR Part 123**

Administrative practice and procedure. Confidential business information. Environmental protection. Reporting and recordkeeping requirements. Waste treatment and disposal. Water pollution control.

**Authority:** Clean Water Act, 33 U.S.C. 1251 et seq.

National Pollutant Discharge Elimination System (NPDES) Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, and Sanitary Sewer Overflows (Page 402 of 426)

Dated: 01/04/00

/s/

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Carol M. Browner,  
Administrator.

**PART 122--EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**

1. The authority citation for part 122 continues to read as follows:  
**Authority:** The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Add § 122.38 to subpart B to read as follows:

- § 122.38 Municipal Satellite Collection Systems** (applicable to State programs, see § 123.25)
- (a) NPDES Jurisdiction. (1) A permit must establish, at a minimum, standard permit conditions at 40 CFR 122.41 and 122.42, which apply to municipal satellite collection systems that convey municipal sewage or industrial waste to a POTW treatment facility, which in turn discharges pursuant to an NPDES permit.
- (2) The Director of the NPDES authority must either:
- (i) Issue a permit to the owner or operator of the municipal satellite collection system that requires the implementation of standard permit conditions throughout the municipal satellite collection system; or
- (ii) Where the operator of the POTW treatment facility has adequate legal authority, issue a permit to the operator of the POTW treatment facility which receives wastewater from the municipal satellite collection system that requires implementation of the standard permit conditions throughout the municipal satellite collection system.
- (b) Definition of Municipal Satellite Collection System. Municipal Satellite Collection System means any device or system that meets each of the following criteria:
- (1) Is owned or operated by a "State" or "municipality" as these two terms are defined at § 122.2;
- (2) Is used to convey municipal sewage or industrial waste to a POTW treatment facility that has an NPDES permit or is required to apply for a permit under § 122.21(a); and
- (3) The owner or operator is not the owner or operator of the POTW treatment facility that has an NPDES permit or has applied for an NPDES permit.
- (c) Permit Applications. (1) Which Owners or Operators of Municipal Satellite Collection Systems Must Submit an NPDES Permit Application?
- (i) All owners or operators of a municipal satellite collection system must submit an NPDES permit application unless the NPDES permit for the POTW treatment facility that receives wastewater from the municipal satellite collection system includes NPDES permit conditions that apply within the municipal satellite collection system.
- (ii) Where the NPDES permit for the municipal collection system that receives wastewater from the municipal satellite collection system requires the implementation of permit conditions throughout the municipal satellite collection system, the Director may require the owner or operator of the municipal satellite collection system to submit a permit application on a case-by-case basis.
- (2) What are the Deadlines for Submitting Applications? Where an owner or operator of a municipal satellite collection system must submit an application under paragraph (c)(1) of this section, the application must be submitted by the following dates:
- (i) If on [date 2 years from publication of final rule], a permit application for the treatment facility that receives flows from the municipal satellite collection system has

been submitted to the NPDES authority and is currently pending, the owner or operator of the municipal satellite collection system must submit a permit application by [date 3 years from date of publication of final rule];

- (ii) If on [date 2 years from publication of final rule], a permit application for the treatment facility that receives flows from a municipal satellite collection system is not pending, then 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 its next permit application;
- (iii) Where a municipal satellite collection system that does not have NPDES permit coverage experiences a sanitary sewer overflow that discharges to waters of the United States, the owner or operator of the municipal satellite collection system must submit a permit application within 180 days of the discharge; and
- (iv) 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 municipal satellite collection system must submit a permit application within 180 days of notification by the Director, unless the Director grants permission for a later date (except the Director shall not grant permission for a submission later than the expiration date of the existing permit).

(3) Application requirements. Any owner or operator or proposed owner or operator of a municipal sanitary sewer collection system that is required to submit an application under paragraph (c)(1) of this section must submit the information required under § 122.21(j) on a Form 2A except for the following regulatory provisions: §122.21(j)(1)(viii)(B), (1)(viii)(C), (1)(viii)(E), (2)(ii), (2)(iii), (3)(iii), (4), (5), (6) and (7).

3. Section 122.41 is amended by adding a phrase to paragraph (d), adding a phrase to paragraph (e), adding a phrase to paragraph (1)(6), and revising paragraph (1)(7), as follows: revising paragraph (1)(6) by adding a phrase to the beginning of the paragraph, by revising paragraph (1)(7) to read as follows:

**§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25)**

- \* \* \* \* \*
- (d) Duty to mitigate. Except for sanitary sewer overflows addressed in § 122.42(e), \* \* \*
- (e) Proper operation and maintenance. Except for municipal sanitary sewer collection systems addressed in § 122.42(e), \* \* \*
- \* \* \* \* \*
- (1) \* \* \*
- (6) Twenty-four hour reporting. (i) Except for overflows from municipal sanitary sewer collection systems addressed in §122.42(g), \* \* \*
- (7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section and for municipal sanitary sewer collection systems, § 122.42(g), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.
- \* \* \* \* \*

4. Section 122.42 is amended by adding paragraphs (e), (f) and (g) to read as follows:

**§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25)**

\* \* \* \* \*

(e) **Municipal Sanitary Sewer Systems - Capacity, Management, Operation and Maintenance Programs.** (1) General Standards. You, the permittee, must:

- (i) Properly manage, operate and maintain, at all times, all parts of the collection system that you own or over which you have operational control;
- (ii) Provide adequate capacity to convey base flows and peak flows for all parts of the collection system you own or over which you have operational control;
- (iii) Take all feasible steps to stop, and mitigate the impact of, sanitary sewer overflows in portions of the collection system you own or over which you have operational control;
- (iv) Provide notification to parties with a reasonable potential for exposure to pollutants associated with the overflow event; and
- (v) Develop a written summary of your CMOM program and make it, and the audit under paragraph (e)(2)(ix) of this section, available to any member of the public upon request.

(2) Components of CMOM Program. You must develop and implement a capacity, management, operation and maintenance (CMOM) program to comply with paragraph (e)(1) of this section. If you believe that any element of this section is not appropriate or applicable for your CMOM program, your program does not need to address it, but your written summary must explain why that element is not applicable. The Director will consider the quality of the CMOM program, its implementation and effectiveness in any relevant enforcement action, including but not limited to any enforcement action for violation of the prohibition of any municipal sanitary sewer system discharges described at paragraph (f) of this section. The program must include the following components, with the exception of non-applicable components as discussed above:

- (i) Goals. You must specifically identify the major goals of your CMOM program, consistent with the general standards identified above.
- (ii) Organization. You must identify:
  - (A) Administrative and maintenance positions responsible for implementing measures in your CMOM program, including lines of authority by organization chart or similar document; and
  - (B) The chain of communication for reporting SSOs under paragraph (g) of this section from receipt of a complaint or other information to the person responsible for reporting to the NPDES authority, or where necessary, the public.
- (iii) Legal Authority. You must include legal authority, through sewer use ordinances, service agreements or other legally binding documents, to:
  - (A) Control infiltration and connections from inflow sources;
  - (B) Require that sewers and connections be properly designed and constructed;
  - (C) Ensure proper installation, testing, and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and new or rehabilitated service laterals);
  - (D) Address flows from municipal satellite collection

- systems; and
- (E) Implement the general and specific prohibitions of the national pretreatment program that you are subject to under 40 CFR 403.5.
- (iv) Measures and Activities. Your CMOM program must address the following elements that are appropriate and applicable to your system and identify the person or position in your organization responsible for each element:
- (A) Provide adequate maintenance facilities and equipment;
- (B) Maintenance of a map of the collection system;
- (C) Management of information and use of timely, relevant information to establish and prioritize appropriate CMOM activities (such as the immediate elimination of dry weather overflows or overflows into sensitive 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), and identify and illustrate trends in overflows, such as frequency and volume;
- (D) Routine preventive operation and maintenance activities;
- (E) A program to assess the current capacity of the collection system and treatment facilities which you own or over which you have operational control;
- (F) Identification and prioritization of structural deficiencies and identification and implementation of short-term and long-term rehabilitation actions to address each deficiency;
- (G) Appropriate training on a regular basis; and
- (H) Equipment and replacement parts inventories including identification of critical replacement parts.
- (v) Design and Performance Provisions. You must establish:
- (A) Requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects; and
- (B) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.
- (vi) Monitoring, Measurement, and Program Modifications. You must:
- (A) Monitor the implementation and, where appropriate, measure the effectiveness of each element of your CMOM program;
- (B) Update program elements as appropriate based on monitoring or performance evaluations; and
- (C) Modify the summary of your CMOM program as appropriate to keep it updated and accurate.
- (vii) Overflow Emergency Response Plan. You must develop and implement an overflow emergency response plan that identifies measures to protect public health and the environment . The plan must include mechanisms to:
- (A) Ensure that you are made aware of all overflows (to the greatest extent possible);
- (B) Ensure that overflows (including those that do not discharge to waters of the U.S.) are appropriately responded to, including ensuring that reports of overflows are immediately dispatched to appropriate



- (C) personnel for investigation and appropriate response;
  - (C) Ensure appropriate immediate notification to the public, health agencies, other impacted entities (e.g., water suppliers) and the NPDES authority pursuant to paragraph (g) of this section. The CMOM program should identify the public health and other officials who will receive immediate notification;
  - (D) Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained; and
  - (E) Provide emergency operations.
- (viii) System Evaluation and Capacity Assurance Plan. You must prepare and implement a plan for system evaluation and capacity assurance if peak flow conditions are contributing to an SSO discharge or to noncompliance at a treatment plant unless you have already taken steps to correct the hydraulic deficiency or the discharge meets the criteria of paragraph (f)(2) of this section. At a minimum the plan must include:
- (A) Evaluation. Steps to evaluate those portions of the collection system which you own or over which you have operational control which are experiencing or contributing to an SSO discharge caused by hydraulic deficiency or to noncompliance at a treatment plant. The evaluation must provide estimates of peak flows (including flows from SSOs that escape from the system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events.
  - (B) Capacity Enhancement Measures. Establish short- and long-term actions to address each hydraulic deficiency including prioritization, alternatives analysis, and a schedule.
  - (C) Plan Updates. The plan must be updated to describe any significant change in proposed actions and/or implementation schedule. The plan must also be updated to reflect available information on the performance of measures that have been implemented.
- (ix) CMOM Program Audits. As part of the NPDES permit application, you must conduct an audit, appropriate to the size of the system and the number of overflows, and submit a report of such audit, evaluating your CMOM and its compliance with this subsection, including its deficiencies and steps to respond to them.
- (3) Communications. - The permittee should communicate on a regular basis with interested parties on the implementation and performance of its CMOM program. The communication system should allow interested parties to provide input to the permittee as the CMOM program is developed and implemented.
- (4) Small Collection Systems. - The Director of the NPDES authority may make the following modifications when establishing the CMOM program permit condition for:
- (i) Municipal sanitary sewer collection systems with an average daily flow of 1.0 million gallons per day or less, the CMOM permit provision may omit the following paragraphs: (e)(2)(iii)(A) through (E); (e)(2)(iv)(A), and (e)(2)(iv)(C)

through (H) of this section. In addition, the requirements in paragraph (e)(2)(v) of this section may be modified for municipalities that are not expected to have significant new installations of sewers, pumps and other appurtenances.

- (ii) Municipal sanitary sewer collection systems with an average daily flow of 2.5 million gallons per day or less, the requirement to develop a written summary of the permittee's CMOM plan ((e)(1)(v)) and the requirement to conduct an audit and prepare a written audit report ((e)(2)(ix)) may be omitted unless triggered by the occurrence of an SSO that discharges to waters of the United States from the permittee's collection system during the term of the permit.

**(f) Municipal Sanitary Sewer Systems B Prohibition of Discharges. (1) General Prohibition.** Municipal sanitary sewer system discharges to waters of the United States that occur prior to a publicly owned treatment works (POTW) treatment facility are prohibited.

The term POTW treatment facility means an apparatus or device designed to treat flows to comply with effluent limitations based on secondary treatment regulations or more stringent water quality-based requirements. Neither the bypass or the upset provisions at §(m) and (n), respectively, apply to these discharges.

- (2) Discharges Caused by Severe Natural Conditions. - The Director may take enforcement action against the permittee for a prohibited municipal sanitary sewer system discharge caused by natural conditions unless the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) The discharge was caused by severe natural conditions (such as hurricanes, tornados, widespread flooding, earthquakes, tsunamis, and other similar natural conditions);
- (ii) There were no feasible alternatives to the discharge, such as the use of auxiliary treatment facilities, retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, or an increase in the capacity of the system. This provision is not satisfied if, in the exercise of reasonable engineering judgment, the permittee should have installed auxiliary or additional collection system components, wastewater retention or treatment facilities, adequate back-up equipment or should have reduced inflow and infiltration; and
- (iii) The permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meets the conditions of this provision.

- (3) Discharges Caused by Other Factors. - For discharges prohibited by paragraph (f)(1) of this section, other than those covered under paragraph (f)(2) of this section, the permittee may establish an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (i) The permittee can identify the cause of the discharge event;
- (ii) The discharge was exceptional, unintentional, temporary and caused by factors beyond the reasonable control of the permittee;
- (iii) The discharge could not have been prevented by the exercise of reasonable control, such as proper management, operation and maintenance; adequate treatment facilities or collection system facilities or components (e.g., adequately enlarging treatment or collection facilities to accommodate growth or

- adequately controlling and preventing infiltration and inflow); preventive maintenance; or installation of adequate backup equipment;
  - (iv) The permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meets the conditions of this provision; and
  - (v) The permittee took all reasonable steps to stop, and mitigate the impact of, the discharge as soon as possible.
- (4) Burden of Proof. In any enforcement proceeding, the permittee has the burden of proof to establish that the criteria in this section have been met.

(g) **Municipal Sanitary Sewer Systems - Reporting, Public Notification and Recordkeeping.** This condition establishes recordkeeping, reporting and public notification requirements for your municipal sanitary sewer system and sanitary sewer overflows from your municipal sanitary sewer system. You do not have to report sanitary sewer overflows under § 122.41(1) if the sanitary sewer overflows are reported under this section.

(1) Definition of Sanitary Sewer Overflow. A sanitary sewer overflow (SSO) is an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. SSOs do not include combined sewer overflows (CSOs) or other discharges from the combined portions of a combined sewer system. SSOs include:

- (i) Overflows or releases of wastewater that reach waters of the United States;
- (ii) Overflows or releases of wastewater that do not reach waters of the United States; and
- (iii) Wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned is not an SSO.

(2) Immediate Notifications and Follow-Up Reports. You must provide the following additional reports for sanitary sewer overflows (including overflows that do not reach waters of the United States) that may imminently and substantially endanger human health:

- (i) You must immediately notify the public, health agencies and other affected entities (e.g., public water systems) of overflows that may imminently and substantially endanger human health. The notification should be in accordance with your CMOM overflow emergency response plan (see paragraph (e)(2)(vii) of this section);
- (ii) You must provide to the NPDES authority either an oral or electronic report as soon as practicable within 24 hours of the time you become aware of the overflow. The report must identify the location, estimated volume and receiving water, if any, of the overflow; and
- (iii) You must provide to the NPDES authority within 5 days of the time you become aware of the overflow a written report that contains:
  - (A) The location of the overflow;
  - (B) The receiving water (if there is one);
  - (C) An estimate of the volume of the overflow;
  - (D) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
  - (E) The estimated date and time when the overflow began and stopped or will be stopped;
  - (F) The cause or suspected cause of the overflow;
  - (G) Steps taken or planned to reduce, eliminate, and

- prevent reoccurrence of the overflow and a schedule of major milestones for those steps; and
- (H) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps.
- (iv) The Director may waive the written report required by paragraph (g)(2)(iii) of this section 122.42(g)(2)(iii) on a case-by-case basis.
- (3) Discharge Monitoring Reports. You must report sanitary sewer overflows that discharge to waters of the United States on the discharge monitoring report (DMR), including the following information:
- (i) The total number of system overflows that discharge to waters of the United States that occurred during the reporting period;
- (ii) The number of locations at which sanitary sewer overflows that discharge to waters of the United States occurred during the reporting period that resulted from flows exceeding the capacity of the collection system;
- (iii) The number of sanitary sewer overflows that discharge to waters of the United States that are unrelated to the capacity of the collection system that occurred during the reporting period; and
- (iv) The number of locations at which sanitary sewer overflows that discharge to waters of the United States that occurred during the reporting period that are unrelated to the capacity of the collection system.
- (4) Annual Report. (i) You must prepare an annual report of all overflows in the sewer system, including overflows that do not discharge to waters of the United States. The annual report must include the date, the location of the overflow, any potentially affected receiving water, and the estimated volume of the overflow. The annual report may summarize information regarding overflows of less than approximately 1,000 gallons. You must provide the report to the Director and provide adequate notice to the public of the availability of the report.
- (ii) Systems serving fewer than 10,000 people are not required to prepare an annual report if all DMRs for the preceding 12 months show no discharge to waters of the United States from overflows.
- (5) Recordkeeping. You, the permittee, must maintain a record of the following information for a period of at least 3 years from the date of the overflow or other recorded event:
- (i) For each sanitary sewer overflow, including overflows that did not discharge to waters of the United States, which occurred in your collection system or as a result of conditions in a portion of the collection system which you own or over which you have operational control:
- (A) The location of the overflow and the receiving water if any;
- (B) An estimate of the volume of the overflow;
- (C) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
- (D) The estimated date and time when the overflow began and when it stopped;
- (E) The cause or suspected cause of the overflow; and
- (F) Steps that have been and will be taken to prevent the overflow from recurring and a schedule for those steps.
- (ii) Work orders which are associated with investigation of system problems related to sanitary sewer overflows;

- (iii) A list and description of complaints from customers or others; and
  - (iv) Documentation of performance and implementation measures.
- (6) Additional Public Notification. You must notify the public of overflows, including overflows that do not discharge to waters of the United States, in areas where an overflow has a potential to affect human health. The criteria for notification should be developed in consultation with potentially affected entities. The notification should be in accordance with your CMOM overflow emergency response plan (see paragraph (e)(2)(vii) of this section.).

**PART 123 B STATE PROGRAM REQUIREMENTS**

1. The authority citation for part 123 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Amend § 123.25 by renumbering paragraphs (a)(39) through (a)(45) to (a)(12) through (a)(18), renumbering paragraphs (a)(12) through (a)(38) as (a)(20) through (a)(46), and adding a new paragraph (a)(19) to read as follows:

**§ 123.25 Requirements for permitting.**

- (a) \* \* \*
  - (19) § 122.38 B (Municipal Satellite Collection Systems).
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