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EXECUTIVE DIRECTOR
Ken Kirk

September 13, 2005

Benjamin Grumbles
Assistant Administrator for Water
U.S. Environmental Protection Agency
Ariel Rios Building (4101M)
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Ben:

As you know, the Office of Wastewater Management has been working on a Fact Sheet and Model Permit Language (FS/MPL) regarding sanitary sewer overflows (SSOs). Between May and August of this year, the leadership of NACWA's Facility and Collection System and Legal Affairs Committees, has had several opportunities to hear from, and meet with, Office of Water staff to discuss the FS/MPL in detail and to ask questions regarding the Agency's plans for the documents. NACWA has appreciated your Office's efforts to talk with us. As a result, NACWA's leadership has spent significant time discussing and reviewing the Agency's FS/MPL approach.

After thoughtful consideration, however, NACWA has concluded that we cannot support EPA's FS/MPL approach to SSOs. For over a decade EPA has worked on scoping, drafting, and redrafting a comprehensive SSO rule that would set a legal, enforceable, and consistent standard of performance for our nation's collection systems. NACWA supported EPA's efforts on a SSO rule with the expectation that the rule would comprehensively address, among other things, the important concepts of National Pollutant Discharge Elimination System (NPDES) permitting for satellite collection systems, the implementation of capacity, management, operation, and maintenance (C-MOM) programs, and the recognition of C-MOM programs as the standard for responsible collection system operation. We are concerned because the FS/MPL approach abandons years of rulemaking effort and instead asserts that complex, core elements of EPA's SSO rule efforts are already required by existing NPDES regulations. NACWA strongly believes that if finalized, the FS/MPL would be an expedient approach to SSOs that would short circuit years of rulemaking and stakeholder input, ignore new EPA information on sewer overflows, and fail to address many complex, important SSO issues.

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More specifically, our concerns with the FS/MPL approach include:

- Whether EPA legally can require C-MOM for collection systems or issue NPDES permits to satellite collection systems without a rule;
- That the FS/MPL approach drives SSO policy making to the ad hoc “permit by permit” level, completely undermining the importance of a nationally consistent program and standard;
- That the FS/MPL advances a zero overflow standard, without stating how existing NPDES defenses apply, providing the defenses to unavoidable overflows contemplated in the SSO rule efforts, or linking C-MOM implementation to an overflow defense;
- That a FS/MPL approach would eliminate public participation and comment on these important issues; and
- That the FS/MPL does not address other critical areas of concern, such as discharges that do not reach navigable waters, basement backups, and requirements for Peak Excess Flow Treatment Facilities (PEFTFs).

Sound approaches to these important issues can only be achieved through development of a national, comprehensive SSO rule and program.

NACWA urges EPA to turn its SSO efforts away from a misguided FS/MPL approach and instead resume its work on a SSO rule that is so critically needed to address SSOs in a reasonable and consistent manner. EPA has much existing and new data to support such a rulemaking. EPA has the years of work by the Urban Wet Weather Flows Advisory Committee formed pursuant to the Federal Advisory Committee Act (FACA) which led to the draft 2001 SSO rule. Since EPA withdrew the draft SSO rule for further work in 2001, EPA has published two significant and comprehensive Reports to Congress on sewer overflows. In these Reports, EPA has studied the many efforts underway by the states to regulate collection systems and establish overflow reporting networks, and has researched the human health and environmental impacts of sewer overflows.

The time is long overdue for us to renew serious discussion of SSO issues and solutions. NACWA believes that with focused effort over the short-term, EPA could propose for public comment a credible SSO rule and further the national dialogue on this key issue. The Agency has committed many times over since 2001 to move forward with a SSO rule despite the complexity of the issues. The FS/MPL approach falls far short of this commitment.

NACWA is as committed to working with EPA to develop a national SSO program today as we were a decade ago when the Urban Wet Weather Flows Committee was formed with our support and participation. Please contact me at 202/833-4653 to discuss this issue further.

Sincerely,



Ken Kirk

Executive Director

cc: Jim Hanlon, Director, Office of Wastewater Management
Linda Boornazian, Director, Water Permits Division
Don Brady, Chief, Municipal Branch