

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 (l)(6), and revising paragraph (l)(7), as follows: revising paragraph (l)(6) by adding a phrase to the beginning of the paragraph, by revising paragraph (l)(7) to read as follows:

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

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- (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), * * *

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- (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.

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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)

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(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 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 – 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(l) 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 – 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 – (Municipal Satellite Collection Systems).

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