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Sewerage Agencies

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June 8, 2001

The Honorable Christine Todd Whitman
U.S. Environmental Protection Agency
Ariel Rios Building, 1101A
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

Re: Sanitary Sewer Overflow Regulations

Dear Governor Whitman:

The Association of Metropolitan Sewerage Agencies (AMSA) understands that you are continuing to evaluate options for moving forward with the proposal of regulations under the Clean Water Act (CWA) for sanitary sewer overflows (SSOs). AMSA supports the U.S. Environmental Protection Agency's (EPA) development of a federal rule governing SSO control, and continues to publicly support many of the basic tenets embodied in the January 2001 draft proposed SSO regulation ("draft proposal"). A national regulatory program with the appropriate blend of permit-based controls and site-specific performance standards will help provide collection system owners/operators with a clear endpoint for managing their sanitary sewer collection systems and a standard by which to gauge compliance. AMSA member agencies are already spending significant time talking to communities about the importance of the impending SSOs regulations and of implementing robust programs to improve sanitary sewer collection system capacity, management, operation and maintenance.

The draft proposal, however, would establish an unreasonable framework for controlling SSOs, and publishing the draft proposal in its current form will limit EPA's ability to craft a more balanced approach. This letter outlines our concerns with the draft proposal and provides constructive improvements for your consideration. We believe our suggestions will ensure that EPA's proposed SSO regulations will be both workable and widely accepted by the owners/operators of municipal sanitary collection systems.

Standards for Municipal Sanitary Collection Systems

The draft proposal imposes an inconsistent and ultimately unworkable program for regulating SSOs. The most problematic aspect of the draft proposal is the retention of a zero overflow standard for collection systems – a standard that is unachievable considering the physical realities of sewer lines. This standard will reduce the effectiveness of efforts taken to control SSOs in this country. Even the most aggressive measures taken by collection system owners/operators to control overflows will be deemed insufficient under the draft proposal. We believe EPA should propose an alternative to the draft proposal's zero overflow standard. The following discussion outlines the justification for this alternative approach.

A. Prohibition of Sanitary Sewer Overflows

EPA has historically viewed a sanitary collection system as a component of the publicly owned treatment works (POTW) that accepts its flow. Under this interpretation, the same NPDES permit that governs discharges from the treatment plant is extended to the collection system, and the secondary treatment standard for discharges from POTWs has been applied to releases from the collection system.

The draft proposal takes an important step by establishing a separate NPDES permit program for collection systems, and effectively disconnecting the collection system from the treatment plant. Under the draft proposal, collection systems will have their own NPDES permits with their own permit terms. This separation is appropriate given the primary function of collection systems to convey wastewater to the plant for treatment but not to provide treatment.

While the draft proposal severs the regulatory connection between the treatment plant and the collection system, it then reconnects the two by applying a zero discharge standard to collection system releases based on the treatment plant's secondary treatment standards. A secondary treatment standard applicable to treatment plants is incompatible with the function of the collection system. In addition, the draft proposal specifically negates the use of the existing NPDES permit bypass and upset defenses for collection system discharges and offers significantly more limited, after-the-fact defenses.

A zero discharge standard is technologically impossible and scientifically unsupportable. Collection systems can not be built to completely eliminate overflows. The Agency recognizes this in the draft proposal, stating that "some overflows are unavoidable, even at the best run systems" (Draft Proposal Preamble Section IV.B). EPA lacks the scientific basis to prohibit all overflows based on an assumption that any given overflow from a collection system will contain pollutants at levels that violate the CWA or water quality standards.

A zero discharge standard also circumvents the required process for developing CWA technology-based standards. EPA is required to develop technology-based standards using studies and data regarding the performance of well-operated systems. The draft proposal establishes a zero discharge standard for collection systems without studies showing that this represents an attainable level of performance. Given

the Agency's acknowledgment that eliminating overflows is impossible, the standard is at odds with EPA's own understanding of the physical limitations under which collection systems operate. When taken in conjunction with the replacement of the bypass and upset defenses with unusable defenses, AMSA vigorously assert that the zero discharge standard imposes an unachievable and unsupportable standard on municipalities.

B. Alternative Technology-Based Standard for Collection Systems

AMSA believes that an appropriate standard can be developed specifically for collection systems, given the decision to issue NPDES permits for the collection system independent of the treatment plant. The CWA and existing regulations recognize that it is infeasible to utilize numeric effluent limits for certain types of discharges, and that such discharges are appropriately governed by best management practices incorporated as permit terms [40 CFR 122.44(k)]. In addition, certain discharges are recognized to require special consideration due to their unique characteristics [40 CFR 133.103]. Utilizing these existing regulations, a technology-based secondary standard can be created specifically for collection systems consisting of minimum operational practices designed to manage, operate and maintain a collection system in optimum condition and thereby minimize potential overflows.

C. Separate Standards for Operation and Capacity of Collection Systems

With regard to developing and implementing such a standard, the structure of the draft proposal's Capacity, Management, Operation and Maintenance (CMOM) program is problematic. AMSA agrees that proper and consistent management, operation and maintenance of collection systems is a necessary and effective mechanism for reducing certain dry- and wet-weather overflows. AMSA also recognizes that recurring overflows can be caused by insufficient capacity in both dry and wet weather conditions. Management, operation and maintenance (MOM) issues and capacity needs require vastly different types of evaluations and analyses, however, and cannot be addressed in a single process. An effective MOM program requires short-term, day-to-day management-based efforts to provide consistent operation and maintenance, an adequate tracking system, and appropriate staffing and recordkeeping. Capacity issues, however, require long-term planning and significant capital investment to evaluate and restore or upgrade existing pipes.

Because of the distinct differences between MOM and capacity issues, AMSA supports separating the two programs in the proposal and applying appropriate standards to each. For the MOM component, AMSA supports the best management practices approach described above, and is in the process of developing a set of minimum practices for a collection system MOM program. Under this approach, development and implementation of an appropriate MOM program, required by an NPDES permit, would establish compliance with the MOM standard, and any non-recurring overflows that occur after MOM implementation would be deemed unavoidable under the standard. For the capacity component, AMSA supports an approach modeled upon the CSO Control Policy's Long-Term Control Plan process, with

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standards established for proper site-specific collection system design. AMSA is working to more fully develop this type of approach. In general, the standard for recurring, capacity-related overflows should consist of the development and implementation of a site-specific capacity assurance plan. The existing bypass and upset defenses would be utilized to define unavoidable overflows beyond the system's capacity.

D. Authorization Alternative

The "authorization alternative" included in the draft proposal fails to address the absence of an appropriate standard for sanitary collection systems. While the authorization alternative attempts to establish a standard for Peak Excess Flow Treatment Facilities (PEFTFs), it does not resolve the issue of unavoidable overflows. Nor does it set a realistic standard for PEFTFs. AMSA does not support this approach.

AMSA believes that PEFTFs should be governed by a special consideration to the existing secondary treatment standard. Because discharges from PEFTFs are, by nature, derived from less concentrated influent flows, AMSA advocates authorizing the substitution of lower percentage removal requirements or mass loading limits for PEFTFs as is currently provided in 40 CFR 133.103.

Municipal Satellite Collection System NPDES Permit Program

The proposed municipal satellite collection system NPDES permit program provides an appropriate vehicle for implementing collection system MOM and capacity standards, and with the following significant exception, AMSA supports this portion of the draft proposal. AMSA believes that each satellite collection system owner/operator should be given a permit incorporating 1) the operational best management practices established for collection systems, and 2) a site-specific capacity assurance plan developed to address recurring, capacity-related overflows. The draft proposal, however, gives the NPDES permitting authority the discretion to give a collection system permit to either the satellite collection system owner/operator or the POTW that accepts its flow. Because of the numerous and varied legal relationships and state municipal powers governing intercommunity collection systems in this country, AMSA cannot support the discretion the proposed rule gives to the NPDES permitting authority to decide which entity receives a collection system permit. The only appropriate permittee is the satellite collection system owner/operator entity.

As EPA is certainly aware, the draft proposal's CMOM, reporting, public notification and recordkeeping provisions would be burdensome to all potential permittees regardless of the size. In particular, however, expanding the NPDES permit program to include collection systems may place a greater burden on small collection system owners/operators. AMSA would support reductions in administrative requirements for small collection systems as long as implementation of all MOM and capacity-related requirements necessary to control overflows is retained.

Recommended Steps for Moving Forward

As demonstrated above, the draft proposal contains a number of positive principles that, with adjustment, could form the basis for an effective and environmentally beneficial SSO control program. We urge the Agency to consider the following options for moving forward:

- (1) Modify the current draft regulatory language and the preamble to include concepts consistent with those outlined above, and release the revised proposal for public comment.
- (2) Issue the draft proposal as an "Advanced Notice of Proposed Rulemaking" and include an expanded preamble seeking comments on alternative regulatory principles consistent with the concepts outlined above.

We would welcome the opportunity to meet with you and your staff to explore and develop these concepts further. Please feel free to call me at 202/833-4653 if you should have any questions.

Sincerely,



Ken Kirk
Executive Director

cc: Linda Fisher, Deputy Administrator
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