

EPA, STATES EXPLORE HOW TO ADDRESS DISCHARGES FROM SATELLITE SYSTEMS

SANTA FE – EPA has begun to brainstorm on how to permit so-called satellite sewer collection systems under the Clean Water Act, even as California is moving toward regulating potential discharges under state law and Texas is addressing the issue through consent agreements.

At a legal seminar here hosted by the National Association of Clean Water Agencies (NACWA), Steve Sweeney from EPA's Office of General Counsel outlined three possible models to address satellite systems, emphasizing that the agency is "still very much in the brainstorming stage" and is not officially evaluating the models. EPA is, however, seeking feedback from publicly owned treatment works (POTWs) on how permitting satellite systems could reduce sanitary sewer overflows (SSOs), he said.

Municipal satellite collection systems collect and pump wastewater to POTWs, but are not owned or operated by the wastewater treatment facilities themselves — and therefore are not covered by the POTWs' National Pollutant Discharge Elimination System (NPDES) permits. EPA first proposed regulating satellite systems in a proposed rule signed by Clinton-era EPA Administrator Carol Browner in January 2001. However, the Bush administration withheld the proposal from publication in the *Federal Register*.

While every collection system has the potential to overflow, according to POTW and state sources, a federal appellate ruling earlier this year appears to limit EPA's ability to permit facilities that only have the potential to discharge. The U.S. Court of Appeals for the 2nd Circuit ruled Feb. 28 in *Waterkeeper Alliance Inc., et al. v. EPA* that the agency can only require permits for animal feedlots under the Clean Water Act for facilities with "actual" discharges (*Water Policy Report*, March 7, p3).

The definition of "treatment works" in section 212 of the Clean Water Act is very broad and could, theoretically, include collection systems, Sweeney said, explaining that one model for addressing satellite systems would be to permit every system. This, however, would be a "huge increase" of the permitting universe and might be "overkill," he said. Sources say requiring permits for satellite systems would increase regulators' permitting burdens by about 5,000 permits nationwide, even as EPA and state regulators are struggling to address existing permit application backlogs.

Another approach to permitting could be based on the pretreatment model, Sweeney said. Under the industrial pretreatment program, industrial dischargers must reduce the amount of certain chemicals in their wastewater before they discharge it to POTWs. Unlike other environmental programs where federal or state authorities implement and enforce specific requirements, local municipalities are primarily responsible for the pretreatment program.

A third model would be to permit collection systems similar to the approach EPA uses for privately owned treatment works, which allows for co-permittees, he said.

Meanwhile, states are pursuing their own approaches to addressing satellite systems. Sources say California regulators are expected to release the latest draft of a controversial state permitting approach that would address approximately 2,000 collection systems in the state within weeks.

California's draft general permit for sewage collection system agencies would require systems to take all feasible steps to eliminate SSOs, and to report any SSOs that occur after preventative steps have been taken. Additionally, collection systems would be required to control the volume of sewage discharge and recover as much of the discharged sewage as possible for proper disposal (*Water Policy Report*, Sept. 19, p24).

Roberta Larson, an attorney who represents the California Association of Sanitation Agencies, said here that POTWs believe the revised draft will require online reporting of SSO and outline detailed requirements and schedules for plans to reduce SSOs, known as a sewer system management plans (SSMPs). POTWs also believe the revised draft will include enforcement discretion language saying that California can consider not bringing an enforcement action against a POTW if it fully implements its SSMP to reduce SSOs yet an overflow still occurs. SSMPs are the California equivalent of what EPA refers to as capacity, management, operation and maintenance (CMOM) procedures.

Larson said POTWs believe the next draft permit will not contain "affirmative defense" language, despite lobbying efforts from POTWs. An early draft of the permit included such language, which would limit POTWs' liability if an SSO occurred after they followed all the steps in their management plans. But environmentalists have strongly opposed such an approach, and the last draft did not include affirmative defense language.

The new draft is unlikely to make POTWs responsible for infiltration and inflow into privately owned pipes connecting houses and businesses to sewer mains, Larson said. Infiltration into so-called private laterals is one cause of SSOs. And the new draft is unlikely to require third-party certification of SSMPs, she said.

Meanwhile, a California POTW is in the process of launching a study into how to address infiltration and inflow through these later lines (*see related story*).

In Texas, state regulators are in the early stages of an SSO initiative that encourages municipalities to develop and implement CMOM procedures before recurrent SSOs impact human health or become major enforcement issues,

Elston Johnson of the Texas Commission on Environmental Quality said.

Texas is offering municipalities that have recurrent SSOs to enter into a compliance agreement with the state to address their SSO problems. There are no penalties associated with the agreement, but signing such an agreement makes it easier for cities to receive funding for infrastructure improvements and tends to make municipalities more likely to comply, Johnson said.

While Texas is avoiding "being too prescriptive" in what steps POTWs should take to reduce SSOs, the state is encouraging municipalities to base their plans on EPA's CMOM model.

The Texas approach would not protect against third-party lawsuits if an SSO occurs, but that type of litigation has been uncommon in the state, he said.

EPA Region VI has approved Texas' approach in principle, although the state and EPA are still negotiating some points, such as the size of the POTWs Texas should target, he said. Region VI wants the emphasis on big systems, but Texas wants to include all systems. Depending on how the approach works in Texas, Region VI may expand it to other states, he said. — *Lara Beaven*