

On October 20, 1999, the members of the SSO Federal Advisory Subcommittee recommended the substance of the CMOM, Prohibition, Record Keeping, Reporting and Public Notification, Remote Treatment Facilities documents that had been last modified during the SSO meetings of October 18 - 20, 1999. In addition, the members of the SSO Subcommittee recommended principles regarding satellite collection systems and watershed management that were discussed and agreed to at the October meeting. **However, distinct papers on satellite collection systems and watershed management were not developed at the October meeting. Since that time, EPA has developed the two attached papers that are based on a consideration of the discussion at the October, 1999 SSO Subcommittee meeting and comments received from SSO Subcommittee members on the meeting summary.**

As agreed at the October meeting, EPA is distributing these papers to the SSO Subcommittee and as agreed during the last teleconference with the Small Government Outreach Group also is distributing these papers to the Small Government Outreach Group to provide clarification on the Agency's intended direction on these issues. EPA is not requesting comments from members of the SSO Subcommittee, the Small Government Outreach Group or the public at this time; but look forward to your comment during the comment period after the notice of proposed rulemaking on NPDES requirements for sanitary sewers is published in the Federal Register. Thanks again for your hard work and previous input on these issues.

## **SSO NRPM – DRAFT WATERSHED LANGUAGE**

### **A. What is EPA's overall approach to watershed-based planning?**

EPA encourages the use of a watershed approach to prioritize actions to achieve environmental improvements, promote pollution prevention, and meet other important community goals. Under a watershed approach, local stakeholders coordinate in the development of a comprehensive watershed plan that provides for collection of environmentally relevant data and provides the basis for identifying appropriate regulatory and non-regulatory actions to be implemented to improve water quality. A watershed approach does not provide any additional liability protection or change the legal status of discharges to waters of the United States. However, watershed plans can be taken into account when developing enforcement schedules for bringing unauthorized discharges into compliance with the CWA.

A watershed approach to controlling wet weather discharges has the potential to improve the basis for water quality management decisions, provide an equitable and cost-effective allocation of responsibility among dischargers, and, in so doing, deliver the same or greater levels of environmental improvement sooner and at a cost savings. A watershed approach emphasizes the role of local stakeholders in identifying water quality priorities and increases the opportunity for using risk-based approaches to environmental protection.

Several EPA documents establish the principles of using watershed-based water quality planning. EPA's *NPDES Watershed Strategy* (March, 1994) outlines national objectives and implementation activities for integrating NPDES program functions into a broad watershed

approach and provides support for development of State-wide basin management approaches. The *Watershed Framework* (May, 1996) describes EPA's expectations for State and Tribal implementation of watershed approaches. The 1998 *Clean Water Action Plan* has, at its core, an emphasis on local watershed planning. It calls upon State, Federal, and local agencies, watershed-based organizations, and the public to identify watersheds most in need of restoration and to cooperate in the development of watershed restoration action strategies and for the implementation of these strategies.

Additional information is provided in the 1997 draft *Watershed Alternative for the Management of Wet Weather Flows* which was developed with substantial agreement by the Urban Wet Weather Federal Advisory Committee (see [www.epa.gov/owm/unpolwg.pdf](http://www.epa.gov/owm/unpolwg.pdf)). The draft *Watershed Alternative* describes key components of a stakeholder-based approach to watershed planning. This document encourages use of watershed approaches to achieve environmental improvements. The draft *Watershed Alternative* describes a process for identifying key watershed stakeholders (i.e., parties with a direct financial, environmental, or regulatory interest, including unregulated entities), reaching agreement on pursuing a watershed alternative, developing a watershed plan, coordinating to collect necessary data on pollutant sources and impacts, and fulfilling responsibilities under the watershed plan by carrying out regulatory and nonregulatory requirements. The draft *Watershed Alternative* document describes certain inherent flexibilities to such an approach, such as more equitable allocation of responsibilities, coordination of monitoring, market-based approaches, and enhanced stakeholder and public involvement. The document also describes potential regulatory flexibility that NPDES authorities could provide, such as compliance schedules to achieve water quality-based requirements, streamlined monitoring requirements, and synchronization of permit issuance on a basin-wide basis.

**B. Can municipalities incorporate watershed-based concepts into capital planning for sanitary sewer collection systems?**

In today's notice EPA is exploring how to support capital investments in sanitary sewer collection systems that are consistent with and support broader watershed planning objectives. Many municipalities are well positioned to coordinate with other watershed stakeholders in the development of long-term remediation plans to address needs and deficiencies in storm water and wastewater infrastructure, including sanitary sewer collection systems. Municipalities may find it advantageous to take a leadership role in local watershed planning, particularly where municipal discharges contribute heavily to water quality impacts or where a municipality has substantial data, resources, or incentive to take a leadership role.

**C. Generally, how does the Watershed Alternative Work?**

The 1997 *Watershed Alternative for the Management of Wet Weather Flows* proposes a process through which the NPDES permit authority and involved stakeholders participate in a comprehensive watershed planning and implementation process, identifying water quality and environmental problems through a comprehensive watershed assessment. It is an organized

framework that encourages coordination of a number of programs to improve water quality in a more efficient and effective fashion. The watershed alternative does not create new regulatory requirements nor does it diminish any existing regulatory requirements. Rather, it is intended to improve water quality management decisions and help inform the selection of appropriate regulatory mechanisms.

The first step in the watershed planning process outlined in the 1997 draft *Watershed Alternative* involves identification of all stakeholders who can contribute significantly to the implementation of coordinated periodic management activities, who are significantly impacted by water quality problems, who are required to undertake control measures because of legal or regulatory requirements, or who oversee implementation of such requirements. This includes satellite municipalities whose collection systems significantly contribute to wet weather problems; owners of agricultural, industrial, or other pollutant sources outside the urban area that contribute to impairment; and members of the public.

Under the approach outlined in the draft *Watershed Alternative*, each regulated stakeholder would be required to implement appropriate minimum measures without delay. The parties to the watershed planning process coordinate to assess the sources of impairment in the watershed and the degree to which sources contribute to impairment. If the assessment indicates the need for pollution controls beyond minimum measures, the parties should agree on recommendations for allocation of water quality management responsibilities based on sources' relative contributions to impairment. The watershed plan should identify recommendations for final and interim goals, including recommendations to NPDES authorities for establishing or adjusting enforceable requirements. Responsibilities for funding for both planning and remediation projects should be defined. When allowed under State law and consistent with any applicable total maximum daily load (TMDL), the NPDES authority could agree to phase additional water quality regulatory requirements to accommodate the planning process and to synchronize requirements such as monitoring among participants. Special consideration would be warranted for sensitive and high-exposure areas such as beaches and drinking water supplies. Watershed plans can be taken into account when developing enforcement schedules for bringing unauthorized or unpermitted discharges into compliance with the CWA, but watershed plans (including the planning process) are not a bar to enforcement actions.

**D. More specifically, how could the Watershed Alternative be integrated into NPDES permit CMOM program requirements?**

EPA believes that today's proposed CMOM program requirements allow for integration of certain aspects of the approach outlined in the 1997 *Watershed Alternative* along with risk management classifications used by the sewer industry. Industry and EPA guidance recognize prioritizing collection system management activities based on risk. These approaches involve classifying sewers based on the risks to human health or the environment that the sewer presents. Risk-based sewer classifications include the 'critical sewer' approach and the 'reliability class'

approach<sup>1</sup>. These approaches prioritize collection system measures in portions of the collection system whose failure would have particularly significant impact on public health or the surrounding environment.

In today's notice, EPA is proposing that permittees would be responsible for developing and implementing CMOM programs for their municipal sanitary sewer collection systems. EPA supports the assessment of overall health and environmental risks from SSOs and other urban wet weather sources to inform the development of CMOM programs. CMOM programs can reflect watershed considerations in two general ways: 1) CMOM activities may be prioritized based on risk; and 2) other water quality improvement projects in the permittee's capital improvement plan (e.g. addressing deficiencies with treatment plants, combined sewer systems, replacing septic systems with sanitary sewer collection systems; assuming responsibility for inadequate privately owned treatment works and collection systems; storm water control; restoration or protection of aquatic habitat or flow regimes) may be considered when developing schedules for long-term measures.

## **1. Prioritization of CMOM Activities**

In general, public health and watershed considerations are expected to play a role in setting system-specific priorities in CMOM programs. Risk-based prioritizing schemes, such as the critical sewer and/or reliability class approaches, can be reflected in various aspects of a CMOM program, such as the extent of backup equipment and power, frequency and type of preventative maintenance activities, procedures to evaluate structural integrity and hydraulic capacity, and in phasing of long-term activities. EPA requests comment on the appropriate relationship of water quality objectives identified in a watershed plan to interim performance objectives for the municipal sanitary sewer collection system.

## **2. Role of Other Water Quality Improvement Projects in the Permittee's Capital Improvement Plan in Developing Priorities For Long-Term Activities**

Under today's proposed CMOM program requirements, permittees are to identify long-term actions they have planned to address hydraulic and structural deficiencies and CMOM schedules for the actions (see proposed 122.42(f)(2)(iv)(F) and 122.42(f)(4)(ii))<sup>2</sup>. Where long-term actions are needed to address SSO problems, EPA will allow municipalities to consider other

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<sup>1</sup> For examples, see, "Existing Sewer Evaluation & Rehabilitation", WEF manual of practice FD-6, ASCE Manual and report on engineering practice no. 62, 1994; *Construction Grants 1985*, EPA, 1984, EPA/430/9-84/004; "Sewerage Rehabilitation Manual" Water Research Centre, 1998; "Combined Sewer Overflow Screening and Ranking Guide", EPA, 1995, EPA/882/B/95/004.

<sup>2</sup> As discussed elsewhere in today's notice, the permittee's schedule for long-term activities in its CMOM program does not provide any additional liability protection or change the legal status for SSOs that occur. Rather, the status of a specific discharge is related to the permit prohibition language and the circumstances under which the discharge occurs. The purpose of the CMOM schedule is to provide the NPDES authority and other reviewers with information related to how and when sanitary sewer activities (and possibly other water quality improvement projects) will be implemented. Including additional information regarding other water quality improvement projects allows the NPDES authority to evaluate the permittee's overall investments in water quality improvement. Enforcement mechanisms such as administrative or judicial orders are more likely to provide the necessary flexibility to implement watershed management concepts.

water quality improvement projects when developing CMOM schedules for long-term capital improvements. General principles that apply to this approach are:

- The operator of the collection system must be implementing a capital improvement plan that would be expected to result in substantial investment in water quality improvements (which may include projects other than sanitary sewer measures) during and after the planning process. The capital improvement plan must be developed consistent with EPA's accepted scheduling principles and prioritization schemes, including financial capability<sup>3</sup>, and generally reflect health and environmental risks.
- The operator of the collection system must be effectively implementing a CMOM program for the collection system, that includes a process for comprehensive assessment of the management, operation and maintenance of the collection system, and identifying and prioritizing capital needs associated with structural and hydraulic deficiencies;
- Comprehensive watershed planning that takes into account a variety of pollutant sources must not delay the response to on-going SSOs which cause or contribute significantly to public health or water quality problems. Whenever public health or water quality problems are clearly attributable to on-going SSOs and the actions needed to address them are also clear, then remedial actions to address the SSO should proceed as soon as physically and financially possible. These overflows would not be addressed in the context of watershed plans. Overflows that should be addressed in this manner include:
  - o wastewater backups into buildings;
  - o overflows which occur in high public use or public access areas;
  - o overflows that impact sensitive receiving 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).
- Other SSOs may, upon approval of the NPDES authority and other stakeholders, be prioritized in the context of watershed plans. The watershed planning process can be used to identify and prioritize pollutant sources that are causing or contributing to public health or water quality problems. The watershed planning process should be used to identify priorities for measures to address these problems, including long-term actions. This in turn should result in appropriate modification to capital investment plans. Where possible, investment strategies for water quality improvements should be prioritized in a manner that provides the greatest opportunities for health and environmental improvements as early in the process as possible. A watershed plan does not provide

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<sup>3</sup> See "Combined Sewer Overflows-Guidance for Financial Capability Assessment and Schedule Development", March 1996, for guidance on how financial capability is to be considered in developing compliance schedules.

any additional liability protection or change the legal status of discharges to waters of the United States.

- The schedule for long-term actions in the CMOM program for the municipal sanitary sewer collection system should be accompanied by a description of other water quality improvement projects identified in the permittee's capital improvement plan, the costs and schedules for those projects and available information on the relative health risks addressed by the various projects identified in the plan.

This approach is intended to provide municipalities with flexibility to implement comprehensive water quality improvement efforts in the most efficient manner.

**E. How Could Watershed Concepts be integrated into Enforcement Actions to Require SSO Remediation?**

In individual judicial actions where a municipality is negotiating in good faith, injunctive relief sought should be comprehensive in addressing wet weather CSO, SSO and storm water problems within the municipality's watershed. These global settlements of wet weather violations may only be possible if a municipality has a final watershed plan. Enforcement remedies should not be delayed by watershed plan development. Watershed plans can be taken into account when developing enforcement schedules for bringing unauthorized or unpermitted discharges into compliance with the CWA, but watershed plans (including the planning process) should not preclude bringing enforcement actions for violations of the CWA.