

CSO Reporting Bill

QUESTION

The following question was e-mailed to members of the Legal Affairs Committee on May 24, 2007:

“The "Raw Sewage Community Right to Know Act" will be introduced soon on a bipartisan basis in the U.S. House of Representatives. A copy of the draft bill is available here:

<http://www.nacwa.org/getfile.cfm?fn=2007-05rscrka.pdf>

and a draft fact sheet about the bill is here:

<http://www.nacwa.org/getfile.cfm?fn=2007-05rscrkafs.pdf>

As stated in the fact sheet, the bill provides notification of sewer overflows by requiring sewage treatment works to:

- Monitor their treatment works for sewage overflows by using a management program or technology that will alert them of sewer overflows in a timely manner;
- Notify the public, public health officials and other affected downstream entities including drinking water suppliers of any sewer overflows that endanger human health; and
- Report to the state or the Environmental Protection Agency on all sewer overflows as soon as practicable within 24 hours of becoming aware of the overflow and follow-up with a written report explaining the duration and volume of the overflow and steps taken to mitigate the overflow prevent recurrence.

The bill authorizes a total funding of \$340 million to implement the above requirements.

NACWA is considering its response to this bill, and we would like to hear your opinion on it, including how this bill might affect the utilities you represent or work with.”

RESPONSES

NACWA received the following responses from members of the legal affairs committee:

Response 1: The State of Indiana already has a strong program for notifying relevant persons and anyone who requests it of a CSO occurring if the weather forecast predicts an event that would ordinarily cause a CSO. This is generally done through e-mail. However, actual start and stop times and volumes are only reported on the DMR's. The volumes in many cases are estimated since the POTW hasn't installed flow measuring devices. The legislation should:

1. Let states use alternative but equally or more protective notice programs
2. Allow the use of measurement methods that are currently allowed by the states since they have all been approved by the EPA.
3. Limit mandatory direct notification to government agencies, beach managers, drinking water utilities, and maybe NGO's. Avoid someone discharging into a lake or river having to directly notify thousands of people-they could be notified through radio, TV, or web site.
4. Clearly define who needs to be directly notified and who can be notified through the media.
5. Limit SSO notification for overflows not reaching waters of the United States to the appropriate government agencies, media, and adjacent property owners.
6. Set or allow states to set de minimis limits based on characteristic of the receiving waters. 10,000 gallons of CSO discharged into the Ohio River would be meaningless but could be very significant in a small lake or stream.
7. Make sure a significant amount of funding is available for small communities because the cost of the necessary infrastructure and program set up will be much higher per person since the cost of web sites, computer, list serve programming, and measuring devices will be pretty constant.

Response 2: One entity I work with has an administrative order to report all SSOs within 24 hrs. followed by written response within 5 days. More importantly it requires signs 18 inches by 24 inches at any constructed SSO overflow as well as on property across the stream and down 100 yards plus all public access areas, parks, golf courses. etc. Problems include what the sign should say, knowing overflows are happening in wet weather (we are putting sensors on), but more importantly whether we have authority to go on private property to post signs. This includes not only where we have easements but also on property across the stream on homes that don't have constructed overflows. A concern of the Board is whether it will be trespassing to put up the signs, and also any exposure to legal action over decrease of property value claims.

Reporting is an interesting issue. I have one client who is required to report, although many cities do not report wet weather or third party overflows. Results are that city reporting is now facing penalties for vandalism caused overflows as well as first time system overflows. The issues then become liability exposure, jurisdictional issues and third party caused overflows. Obviously cost is a factor. Possibly some type of factor prior to fining would be appropriate, such as two reported overflows from same point that are not fixed, then penalties would be assessed.

If this legislation is enacted there needs to be a time period to figure out the methodology of compliance. When the Clean Water Act was enacted we always said that the law was ahead of the technology and it is even true today.

Response 3: The proposed legislation is similar to the Georgia Spill reporting rule and Atlanta's First Amended Consent Decree (SSO). The Collection System Emergency Response Plan is posted on line at atlantaga.gov on the Clean Water Atlanta link to the consent decree repository. The Ga. DNR rule is quoted in the plan and the text is also mapped on a flow chart.

Response 4: CSO reporting requirements were first enacted into law in Michigan in 1993, and since that time the Michigan program has been viewed as a “benchmark” for other states. Michigan’s statute requires permittees to notify the Michigan Department of Environmental Quality (MDEQ), the local health department, a daily newspaper of general circulation in the county where the permittee is located, and a daily newspaper of general circulation in the county or counties of downstream municipalities whose waters may be affected by the discharge. The reporting requirement is triggered by the discharge of any wastewater which receives less than secondary treatment.

An initial notification must be made immediately when the permittee becomes aware that a discharge has started, and a follow up written report must be filed within 24 hours of the cessation of the event. The written report must provide the amount of discharge, the reason for discharge, the time when the discharge began and ended, and an indication as to whether the CSO control requirements in the NPDES permit have been met. To satisfy the reporting requirement, some utilities have installed level sensors, proximity switches and telemetry at CSO outfall locations so that real time information can be obtained at the onset of a discharge event. The Michigan Department of Environmental Quality maintains an internet accessible database which tabulates information from all permittees on reported overflows, and information is compiled by MDEQ as part of an annual report.

The Michigan statute also requires that in-stream E. Coli sampling and testing be performed after CSO discharge events to assess bacteria levels in the receiving water. Permittees are required to conduct up to 10 in-stream samples after each discharge event unless a waiver is issued by the local county health department based on a determination that the testing is not needed to adequately assess public health risks attributable to the discharges.

It appears that the proposed legislation being considered by Congress would have little, if any, impact on Michigan permittees because the state requirements are already more restrictive than those proposed in the new bill. From a policy standpoint, it is recommended that any federal legislation on CSO reporting be done with care so that the reporting is limited to untreated CSO’s. Under Michigan’s statute, permittees report both uncontrolled overflows and treated overflows, and this has often resulted in confusion since the database does not distinguish overflows where the permittee has implemented a CSO control program and is in compliance with NPDES permit requirements.

Response 5: North Carolina has had a version of this reporting for several years that was established by state law. In terms of the proposed legislation, there needs to be a threshold for reporting (NC currently is 1000 gallons or any amount that reaches surface waters) and the time for reporting should be extended to 48 hours. Based on size of the spill, NC law requires a public notice or a press release. I would suggest referencing the NC reporting system with its 1000 gallon limit on minimum reportable spills [keeping the language that requires reporting of all spills that reach waters of the United States]. I would suggest changing the 24-hour notice in the federal bill to the 48-hour notification currently required at the State level. And I would add the current State threshold of 15,000 gallons for a Public Notice as opposed to the Press Release that is required between 1000-15,000 gallons. Adding these changes will help prevent confusion between this nation legislation and our current “mature” SSO reporting program here in North Carolina.

Response 6: This becoming law would certainly add significant reporting for CSO communities that does not now exist. Utilities in Washington State already essentially do the kind of reporting called for in the case of SSOs and I would guess that most others across the country already do. We are also on the verge of having a more real-time system for the public, by internet, to know when our CSOs are occurring. However, adding the kind of verbal and written reporting of CSO events seems to go against the premises of the CSO program and the long-term control plan.

Response 7: We have reviewed the draft bill and have the following comments:

- The monitoring provisions of this bill essentially mirror the existing permit requirements for some systems in Colorado
- The notification requirements also are in some current permits (24-hour notification to the State and EPA as well as downstream users)
- If this legislation could circumvent the need for an SSO rule with the controversial “no spill” provision language, then it can be argued that the bill makes it clear that spills do and will continue to occur despite best efforts to avoid such occurrences

Response 8: The following link provides information from a 2004 EPA report on reporting and tracking SSOs: <http://www.nacwa.org/getfile.cfm?fn=2004-08ssotr.pdf>