



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

MAY 10 2010

OFFICE OF  
WATER

Mr. Ken Kirk  
Executive Director  
National Association of Clean Water Agencies  
1816 Jefferson Place, NW  
Washington, D.C. 20036-2505

Dear Mr. Kirk:

Thank you for your March 8, 2010, letter concerning the December 22, 2005, draft Peak Flows Policy. In your letter, you raise concerns that the Environmental Protection Agency (EPA) is implementing the draft Peak Flows Policy prior to its finalization.

I would like to express my appreciation for the National Association of Clean Water Agencies' (NACWA) history of strong and continued cooperation with the Agency as it has worked on wet weather issues. In particular, I would like to thank NACWA who, along with the Natural Resources Defense Council (NRDC), provided valuable input to the development of the 2005 draft Peak Flows Policy. The December 2005 draft Peak Flows Policy was intended to interpret the bypass provision in the permit program regulations at 40 CFR 122.41(m) and provide a structure that wastewater utilities could use as a reliable path forward in implementing their responsibilities under the rule. EPA received comments on the December 2005 policy and, as your letter points out, has not issued a final policy. The proposed Policy, however, has not been withdrawn, and remains a viable path forward for utilities to meet their obligations under the bypass rule.

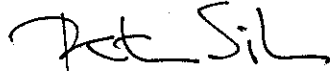
You are correct that in 2003 EPA requested public comment on a proposed policy that provided a different interpretation of what a bypass is. This policy received significant public and congressional opposition and the Agency subsequently withdrew the 2003 proposal.

We recognize that there are several long-standing issues related to management of wet weather flows at publicly owned treatment works. As noted by EPA's Deputy Administrator, Bob Perciasepe, at NACWA's National Environmental Policy Forum on April 20, 2010, we hope to decide soon on a path forward to resolve these issues. We look forward to working with NACWA on this effort.

*[Faint, illegible text, likely bleed-through from the reverse side of the page]*

Again, thank you for your letter. I appreciate your concern for the health and safety of the public and the environment. If you have any questions or suggestions, please contact James A. Hanlon, Director of the Office of Wastewater Management, at (202) 564-0748.

Sincerely,

A handwritten signature in black ink, appearing to read "Pet Silva". The signature is stylized with a large, sweeping "P" and a long, horizontal "S".

Peter S. Silva  
Assistant Administrator