

NACWA Talking Points for EPA Listening Sessions on the Notice for Stakeholder Input into a Sanitary Sewer System Policy

The Association applauds EPA's decision to begin collecting information in support of the development of a comprehensive regulatory program for the Nation's sanitary sewer systems and we look forward to working with the Agency on this important rule. NACWA hopes that the process initiated by this request for stakeholder input will include meaningful dialogue between all interested parties, culminating in a final regulation that takes a comprehensive, holistic approach to the regulation of sanitary sewer collection systems, including uniform national requirements for permitting of satellite sewer collection systems, peak excess flow treatment facilities, and wet weather flow management practices at municipal wastewater treatment facilities.

NACWA feels strongly that the management of peak flows at the treatment plant must be addressed as a component of the sanitary sewer system rulemaking. The issue of peak flow management at the treatment plant is inextricably linked to collection system management and utilities must be able to develop a system-wide program for collection system and wet weather management that meets their Clean Water Act mandates and the needs of their communities.

The 2005 proposed peak flows policy was conceived and developed at a time when collection system standard conditions were lacking. Now that EPA has expressed an interest in addressing the broader issue of sanitary sewer system management together as a whole, pursuing the requirements contemplated in the 2005 proposed policy separately would be inappropriate.

NACWA believes that all options for the management of peak flows at the treatment plant must be on the table as EPA considers a comprehensive solution. A holistic, system-wide approach has always been NACWA's preferred path forward and the Association applauds EPA for taking on this important challenge.

The imposition of standard collection system management, reporting, and notification requirements needs to be done carefully and with the right level of detail to ensure the federal program overlay does not over-prescribe requirements that are best left for site-specific consideration.

NACWA believes that:

- EPA must develop a nationally consistent definition of an SSO. This definition should address two critical legal issues long argued by NACWA:
 - First, sanitary sewer collection systems are not part of the POTW;
 - Second, EPA only has legal authority over those overflows that reach waters of the United States.
- A zero-discharge standard for SSOs is inappropriate. Any final regulation should shield utilities from enforcement actions or lawsuits for overflows that are beyond the reasonable control of the collection system operator. The "prohibition and excuse" approach adopted in the 2001 proposal imposes an unrealistic standard that will expose even the best-

designed and best-operated systems to costly enforcement actions and citizen suits with little environmental benefit.

- Standard Clean Water Act permit conditions should include the establishment of a management, operation, and maintenance program and the development of a site-specific, long-term capacity assurance plan that includes a metric such as a design storm or overflow recurrence characteristics to establish the system's performance standard.
- Compliance with these standard conditions and the system's site-specific performance level should determine whether a collection system is in compliance with the Clean Water Act. The zero-discharge standard currently applied to these systems is technologically impossible and scientifically unsupportable.
- Management, operation, and maintenance requirements should be carefully crafted to ensure they do not prescribe specific requirements or standards for collection system management. The Core Attributes of Effectively Managed Wastewater Collection Systems should factor heavily in EPA's decision making.
- Satellite collection systems must be brought into the Clean Water Act permit program. Collection system owner/operators should be required to establish management, operation, and maintenance and capacity assurance programs. NACWA is recommending that permits be issued directly to the collection system owner/operator, but also recommends studying existing regional collaborations and agreements to determine other possible approaches. Collection systems should be required to coordinate capacity assurance efforts with the regional treatment system. The rule must also recognize the important contribution of private sewers to the problem.
- Nationally consistent, reasonable requirements for reporting, notification and recordkeeping for SSOs should be developed. While recent Congressional efforts provide data points for EPA's rulemaking efforts, NACWA believes that elements of those legislative proposals may be too prescriptive to be effective nationally. Reporting and notification requirements should put protection of public health first. This means that a balance must be struck between notifying the public when there is potential for imminent harm, and avoiding unnecessary notification that can lead to desensitization when there is no public health threat.
- The current bypass regulation does not apply to the management of peak flows. Any final regulation must include provisions authorizing peak flow treatment scenarios at POTWs under certain circumstances and address the permitting of peak excess flow treatment facilities located in the collection system.

NACWA is encouraged by EPA's willingness to explore inclusion of watershed-based planning principles that provide flexibility to prioritize collection system management activities based on risk and potential environmental benefit. EPA should also recognize the importance of financial capability considerations in addressing SSO issues. NACWA looks forward to working with EPA and stakeholders as the Agency reviews the input from this information collection process and commits to assist the Agency as appropriate in the development of a rule.