



July 08, 2011

Ms. Connie Bosma
U.S. Environmental Protection Agency
Office of Wastewater Management
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 4203M
Washington, DC 20460

Via e-mail to: bosma.connie@epa.gov

Re: Post-Construction Stormwater Rulemaking

Dear Connie,

Recently, staff from American Rivers, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the National Association of Clean Water Agencies (NACWA), the Natural Resources Defense Council (NRDC), and the Water Environment Federation (WEF) gathered to discuss each organization's perspective on stormwater management policies and developments. As part of this conversation, we were able to exchange and explore areas of common interest regarding stormwater, including EPA's anticipated revisions to the nation's Clean Water Act stormwater regulations.

Through your recent presentations, we have gleaned an updated understanding of several directions that we believe the Agency is considering for the forthcoming proposed rule. This letter does not represent any of the undersigned organizations' complete position on the issue. Further positions of our organizations' have been expressed in the past and will be contained in future letters. However, because of our common interest in these matters, we collectively wanted to share some of our thoughts with your office. While our organizations do not agree on all aspects of stormwater management policy, or on all components of what the proposed stormwater rule should look like, there are a number of broad areas of consensus between our organizations. Additionally, there are a number of other issues apparently under consideration for inclusion in the rule proposal on which we would appreciate further clarification.

In general, our organizations recognize that stormwater continues to be a growing water quality problem in many parts of the country and that EPA's forthcoming stormwater rule provides an important opportunity to improve stormwater management practices nationally. We support the Agency's efforts to develop a well-informed and effective set of updated regulations that balance both environmental and economic considerations, particularly where these regulations create further incentives for green infrastructure-based approaches to stormwater pollution prevention, result in a more innovative and equitable regulatory program, foster the potential for watershed approaches to stormwater planning and control, and provide consistent direction and standards while allowing for local flexibility.

With these principles as context, we offer the following:

➤ *Performance standards for post-construction discharges from new development and redevelopment projects*

In line with the recommendations of the National Research Council, we understand EPA is considering whether to establish new development and redevelopment standards for post-construction discharges that will require completed projects to either be designed, built, and maintained so as to retain the sites' pre-development hydrology or manage on-site the precipitation generated by a certain size storm. Our organizations believe that including new development and redevelopment standards for on-site retention is an important element of the proposed rule and will help to provide much needed reductions in the permanent discharges created by development, both in "greenfield" undeveloped locations and urban infill settings.

We understand that EPA may be considering whether to set a different standard for redevelopment or urban infill projects. We all agree that any new standard can and should be harmonized with the goal of supporting economically and socially valuable projects, but we differ on whether a differentiated standard is necessary or desirable. We agree that any standard should contain flexible means for compliance that provide alternatives for projects where it is infeasible to meet the standard on-site. Such flexibility may allow for off-site compliance or other alternative approaches.

We also note that any performance standard must account for the variety of climate, soil, and other physical conditions around the country, as well as the pre-existing state and local stormwater programs. We encourage EPA to adopt a standard, or set of standards, that reflects sufficient flexibility to address these variations while yet providing consistency across the states and regions. We also suggest that the Agency adopt a public process whereby states can obtain recognition from EPA that they can administer programs that are at least as stringent as the federal standards, but reflect the unique factors that certain states may face in establishing stormwater controls and preserve functioning elements of existing state programs.

In our discussion with your staff and others, we have heard a suggestion that EPA may be considering a percentile storm standard as part of the proposed stormwater rule with the addition of a "water quality backstop" where a standard based on either pre-development hydrology or retention of precipitation from a design storm may not fully address local water concerns. We would appreciate some clarification of the process EPA may undertake to identify appropriate percentile storm standard or standards, how the water quality backstop may be identified or calculated, and any links it may have to actual water quality standards or criteria.

➤ *Revisions to MS4 boundaries and extensions of the permitting program to currently unregulated dischargers.*

We understand that the Agency is considering a short list of options to extend the current regulatory boundaries for MS4s covered by the NPDES permitting program. One potential path would be redefine MS4s to include "urbanized clusters" of 2500 people in a density of at least 1000 people/sq. mile (as identified by the most recent census). This option would extend the MS4 program to areas which may currently lie on the fringes of existing urban and suburban areas but which may be susceptible to future development. Another option under consideration would be to extend the area covered by each MS4 permit to the boundaries of the HUC-12 watershed into which

the MS4 discharges. Regardless of the ultimate MS4 boundaries, we also understand that EPA may include a component in the rule that would require some stormwater discharges located outside the MS4 area to meet the site-specific standards for new development or redevelopment.

After considering these options, we believe that a combination of the urbanized cluster approach and the watershed-scale approach is worth further study and consideration by EPA as a way to extend permit coverage where needed to embrace newly developing areas, as well as to move the program toward a more holistic watershed approach. We also believe it is critically important for EPA to include in the rule certain stormwater dischargers located outside of an MS4 that have an impact on water quality. This will address the growing issue of dischargers such as large residential subdivisions or large commercial properties located outside of a regulated MS4 area, but still significantly contributing to water quality issues, creating water quality complications for downstream regulated MS4s and other point sources. Additionally, regulation of such discharges located outside the MS4 will help level the playing field of stormwater controls within and outside urbanized areas, so that the rules cannot be said to tip development decisions toward less protected locations.

➤ *Retrofit programs to reduce the degree of imperviousness in already developed areas.*

All of our organizations recognize that runoff from existing areas can be a cause of poor water quality in urban and suburban watersheds, and that reducing these impacts will be critical to our efforts to restore these waters. We also recognize that many municipalities around the country are already leaders in efforts to reduce runoff through retrofit projects which reduce local levels of imperviousness. In many cases, individual retrofit projects have proven to be cost-effective, and enabled municipalities to achieve water quality goals through locally developed programs that offer many other benefits, such as enhanced aesthetics, public health, and even reduced energy costs. Some of our organizations have concerns about the potential financial and resource burdens associated with a broader, programmatic retrofit requirement. Whether the retrofit requirement should be included in the rule is an area in which we do not all agree. Those groups that do favor a retrofit component agree that EPA's anticipated stormwater regulations should enable municipalities to achieve identifiable goals through locally developed, cost effective programs tied to improvements in water quality.

We have learned that EPA may be considering three options for an MS4-based retrofit program: a CSO-style approach built around a long-term plan to comply with water quality standards; an iterative approach that would allow MS4s to identify short and long term objectives and implement them over successive NPDES permit cycles; and a hybrid combination of these two approaches that would establish a long-term plan with certain key milestones but also allow for an iterative, flexible approach on behalf of the MS4 to achieve those milestones. Again, our organizations are not all in agreement that a retrofit program, if included in the rule, should be limited to the geographic area covered by MS4s. However, if EPA chooses to pursue that approach for sites within MS4s, the third, hybrid approach appears most worthy of additional consideration by EPA as it could provide both objective milestones and the ability for local communities to plan needed investments over a time period which allows for local flexibility and prioritization in accomplishing retrofit projects and achieving water quality improvements. Additionally, all of our organizations agree that the federal government should provide financial assistance to municipalities and states to finance retrofit projects carried out by local governments (even if done outside a rule). Finally, we would appreciate additional clarity on how EPA will determine an appropriate time frame for implementation of

retrofits, which MS4s would be required to implement a retrofit plan, and what process a regulating authority would follow for approving a municipality's retrofit plan.

➤ *Application of stormwater regulations to combined sewersheds.*

Recently, EPA has indicated it may consider applying the post-construction standard component of a national stormwater regulation in non-MS4 areas, particularly those served by combined sewer systems that may be subject to Long Term Control Plans and other regulations. Although some cities have indicated that they are planning to apply the post-construction new development/redevelopment standard in combined sewersheds, we agree EPA should invite comment on this potential approach in the preamble of the proposed rule to seek public input and further investigate the implications of including such a requirement in the final rule.

We appreciate the considerable effort and expertise that the Agency is devoting to this rulemaking effort and look forward to continuing to work with you toward an effective, well-supported update to our nation's stormwater regulations. We would welcome the opportunity to discuss this letter, and other stormwater-related issues.

Sincerely,



Andrew Fahlund
Senior Vice President, Conservation
American Rivers



Ken Kirk
Executive Director
National Association of Clean Water Agencies



Jeff Eger
Executive Director
Water Environment Federation



Alexandra Dapolito Dunn
Executive Director & General Counsel
Association of State & Interstate Water
Pollution Control Administrators



Jon Devine
Senior Attorney, Water Program
Natural Resources Defense Council

Cc:

Nancy Stoner, Acting Assistant Administrator, Office of Water, EPA
James Hanlon, Director, Office of Wastewater Management, EPA