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Water Docket

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The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on the draft Information Collection Request (ICR) proposed by the U.S. Environmental Protection Agency (EPA) to gather information for development of a national stormwater rule. NACWA's comments have been compiled by members of the Association's Stormwater Management Committee and apply specifically to the draft questionnaire for municipal separate stormwater sewer system (MS4) utilities. We have divided our comments into two sections: the first section contains general comments on the questionnaire, and the second section contains specific comments on individual questions in the questionnaire.

***General Comments***

1. The questionnaire frequently mentions "water quantity control" but seems to mean peak flow (rate) control. Careful consideration in developing questions should be given to specific measurements of "water quantity control." These include rate (gallons per minute), rainfall intensity (inches per hour), quantity (million gallons) and duration (two year – one hour storm). Without such specifics, MS4s responding to the questionnaire will lack a common understanding of the questions and this will undermine the results.
2. Some type of information gathering regarding the dynamics between MS4s and state and federal entities could be insightful. The questionnaire is mute to issues such as transportation stormwater systems draining into MS4s, enforcement logistics, related state and federal permits such as 401 and 404 certifications, etc. when applied to other governmental bodies that are "higher in the food chain" than local MS4s.
3. Some type of information gathering regarding the dynamics between MS4s and the agricultural community would also be insightful.

4. In many of the questions and in the definition of MS4, the questionnaire seems to not account for the public/private inter-relationship that MS4s deal with in managing stormwater. This overall lack of understanding that publicly owned systems often drain into private property and then back into the public system, and that the majority of stormwater practices and drainage are on private property, will undermine results on the questionnaire. MS4s must deal with many land use, zoning, and planning related issues at the local level. It is important that the questionnaire understand the overall context within which MS4s are managing stormwater.
5. The questionnaire appears to emphasize the use of infiltration as a stormwater management technique but does not take into consideration the varying soil types throughout the country. Additional questions on soil type and their ability to infiltrate water would help provide information on those parts of the country where infiltration practices may be hampered by soil conditions.
6. Questions regarding the regulated community's perspective on contractor capability/skill in BMP installation would be insightful. MS4s in some parts of the country currently see an overall lack of knowledge/depth in the contracting community in regards to post-construction BMP projects.
7. There is concern among many MS4s that the projected 52 hours needed to complete the survey is overly burdensome and will take away from time needed to run an effective stormwater management system. EPA should look for ways to reduce the time needed to complete the survey. Additionally, EPA should consider making a shorter survey available for completion online or, alternatively, explore ways to gather the needed information through two or three hour in-person interviews at locations around the country.
8. A clear definition of what the information will be used for has not been provided. EPA staff has previously indicated that the information would be used to establish a "baseline." What sort of baseline? What comparisons would be made? Once a baseline is established, what then?
9. The questionnaire does not assess the effectiveness of existing stormwater management programs to mitigate the negative impacts of stormwater to water quality. Prior to undertaking new rulemaking, an effort should be made to determine what aspects of existing programs are being effective. More direct questions focused on that aspect should be asked. Implementing MS4 utilities are in an excellent position to provide this information, but the current questionnaire lacks direct questions to elicit such information.
10. The questionnaire asks extensive questions regarding MS4 utility budgets and providing this information will be one of the most difficult tasks in completing the survey. Municipalities have many departments involved in programs to ensure compliance with stormwater permits. Some MS4 utilities have questioned the value of trying to separate out and assess a dollar amount associated with such wide-ranging activities as street sweeping, park maintenance activities, and hundreds of different educational messages that serve a variety of purposes. Additionally, asking how much a municipality spends on stormwater as a percent of its total budget does not necessarily correlate with level or service or water quality benefit. Different municipalities offer different services – for example, some do not provide fire or water or wastewater services as part of their overall budgets. This means that the percent

spent on stormwater by such a city may appear high when, in reality, the overall dollar amount spent is less than a city that provides all services.

11. No information is being collected via the questionnaire on the amount of development/redevelopment a community or MS4 manages. Many small and mid-size urban communities are built out. Consequently, there may be on the order of 2-3 qualifying projects per year. Conversely, expanding communities may be working with 10-20 qualifying projects per year. The burden of stormwater management will vary greatly and in a manner that is not captured by the questions in the questionnaire.

### ***Specific Comments***

*Definition of Infiltration Basins and Trenches/Dry Well:* This definition is troublesome. There is always supposed to be an outlet for stormwater regardless of the practice. Infiltration systems are not designed to mitigate larger storms and these larger storms need to be routed safely. In addition, should the system clog completely, the stormwater needs to go somewhere. *Infiltration basins* can be large or small where *Dry Wells* are typically used for small applications.

*Definition of Permeable Pavement:* Recommend revising the definition to read as follows: conveys stormwater to the subsurface with the intention of allowing distributed infiltration into the soil. Crushed stone is typically used as the subsurface material and can be used to provide detention.

*Definition of Rain Barrel:* The terms *cistern* and *rain barrel* are often used interchangeably in the questionnaire but are not seen as equivalent terms by most MS4s. Both practices collect and store rain, typically from rooftops, however rain barrels generally provide much less stormwater storage while appropriately sized cisterns can be an effective part of on-site stormwater management.

*Definition of Detention Basin:* Consider revising definition to account for the fact that detention basins can be a wet or dry stormwater management system. The detention basin does not infiltrate.

*Definition of Green Roof:* Consider revising definition as follows: A vegetative system installed on top of and in addition to the traditional roof system. The green roof includes a waterproof membrane, drainage, high inorganic growing media and appropriate vegetative species such as sedums. Green roofs provided retention and detention of stormwater as well as providing other ancillary benefits such as summer cooling, lowered urban heat island effect and improved air quality.

*Definition of Newly Developed Projects:* The term 'Newly Developed' is not an industry term and is likely to cause confusion as to the set of projects for which the questionnaire is seeking information. Specifically, the use of the term "newly" implies development that has occurred within a timetable that is not specified in the definitions and/or projects currently in development. The intent appears to be to discern between development of undeveloped land and re-development or the development of previously developed land. To clarify, consider using the term "New Development" instead.

*Definition of Retention Basin:* Can be a wet or dry stormwater management system that allows for infiltration. Additionally, some MS4 utilities believe the current definition that discusses "water quality and quantity" is

confusing, since some ponds are not designed for water quality purposes and also do not control water quantity. Consider broadening this definition to account for the wide variety and uses of retention ponds.

*Definition of Soil Amendments:* The term “compound” should not be used as part of this definition. Soil amendments can include adding organics, inorganics, sand, wood chips, etc.

*Definition of Storm Sewers:* Storm sewers are used to collect and convey stormwater to a point of discharge. The reference to conveyance to a treatment plant should be removed since that is technically a combined sewer and not a storm sewer. Additionally, what about open channels that are used for stormwater control? Many MS4s use open channels as part of their MS4 system, but the current definition appears to exclude such channels.

*Additional definitions needed:* Consider adding a definition for the term “jurisdiction” as it is used in the questionnaire, as well as definition of the terms “flooding” and “backups of flow.”

*Question A-3:* Consider using total contributing area or total drainage area, not surface area.

*Questions A-4 & A-5:* In some states there are Phase II communities (cities) within Phase I communities (counties). In some cases the county implements many of the permit requirements while the city permits some within their own boundaries, but they are not separate and distinct programs. It is unclear how these two questions should be answered in these instances.

*Question A-6:* The diameter of outfalls should be defined at 36” or greater. In many communities, a single street could have a 15” or 18” pipe, and many municipal governments use 18” as a minimum diameter.

*Question A-7:* Question needs to take into account that capacity is often based on weather/rainfall condition. The issue of capacity is not really a “yes” or “no” question – it depends on conditions. The question should be phrased in the context of whether there is a design storm standard in place, how long has it been in place, and how is it applied in new development and redevelopment.

*Questions A-7 & A-8:* The definition of a stormwater conveyance system being at or near capacity will vary with the Level of Service that a community expects to provide with that pipe. Some responders may look to designed capacity to answer the question while others may look to an observed facility performance, such as roadway flooding or ponding water. The occurrence of such flooding may not be improper. For example, the Ohio Department of Transportation design storm standard for sizing a storm pipe varies with the class of roadway. As such, the storm system associated with a four-lane divided highway is more robust than the storm system associated with a two-lane rural road. For a given rain event, the storm sewer system capacity may be exceeded (i.e. roadway flooding occurs), but the pipe remains properly sized. The simple Yes/No question with the space for explanation is not sufficient to capture the level of complexity associated with levels of service and system performance. Either a standard should be defined for assessing the capacity of the system or the question should be removed.

*Question A-9:* This is a very difficult question to answer. The question as asked and the possible available answers are far too generalized. Rainfall amounts that result in flooding are foremost dependent upon the duration of the event; thus there is a need to quantify this question and the available answers by including a time frame. Furthermore, a multitude of other known variables contribute to flooding and are not included in

this question, such as storm intensity. Also, should utilities be required to answer this question for the entire MS4 when certain variables dictate flooding conditions in some targeted areas and not others within the MS4?

*Question A-12:* This could be a tricky question since different MS4 utilities use different definitions of impervious surface for stormwater billing purposes. Communities without stormwater utilities or those with utilities that do not use impervious area as a basis for fee calculation will have a challenging time answering the question. The time required to estimate the area using aerial photos will be disproportionately prohibitive to small and medium communities with limited technical staff. Consequently, the response to the question will reflect larger and more sophisticated communities and potentially under represent small and medium communities. These differences could skew the results. Also, does jurisdiction mean MS4 for this question?

*Question A-15:* This question fails to account for stormwater management practices under private control. In many municipalities, large numbers of stormwater management controls are installed by private property developers and the city has no existing operation and maintenance responsibilities. A broadening of this question to distinguish between public and private categories may lead to more insightful conclusions. Additionally, the term jurisdiction should be used instead of MS4. It is confusing to switch between terms of jurisdiction, MS4, municipality, etc.

*Question A-16:* Clarification is needed as to whether this question refers to privately owned stormwater control structures, publicly owned control structures, or both. How meaningful can this information be, considering that each MS4 may have a different number of stormwater control structures? If MS4s inspect the same stormwater control structure multiple times, should each inspection be counted?

*Question A-17:* This is difficult to answer for several reasons. Employees receive training at differing frequencies. Who is considered an “MS4” employee? Municipal employees in various city departments may perform job functions covered by an MS4 permit, although stormwater is not necessarily their primary responsibility. Examples include Fire Department spill response, Public Works street sweeping, Health Department mosquito control, etc. Perhaps consider removing the term “MS4” and instead refer to “municipal” employees.

*Questions A-27 & A-29:* These questions could be combined by having a column for redevelopment and a column for new development.

*Questions A-28 & A-30:* These questions should also ask about the source of the data to ensure reliability.

*Questions A-28 – A-30:* It should be noted that these questions will be very time consuming for a municipality with significant development to complete, particularly with the greater than one acre caveat.

*Questions A-34 & A-38:* These questions could be combined to have a column for redevelopment and a column for new development.

*Questions A-35 & A-39:* These questions could be combined to have a column for redevelopment and a column for new development.

*Questions A-36 & A-40:* These questions could be combined to have a column for redevelopment and a column for new development.

*Question A-41:* This question asks about any ordinances in place to require stormwater retrofits. A follow up question should ask if there is any voluntary program in place for stormwater retrofits.

*Questions A-41 – A-43:* These retrofit questions should strongly consider the public ownership/private ownership issues.

*Question A-46:* In some states, building a school is not a “municipal works project.” Schools are built by school districts, which are governance agencies independent of municipalities. In some cities, projects constructed on park lands and other city department facilities may not be considered “municipal works projects.” What specifically is intended to be covered by this term? Also, the phrase “stormwater retention practices” should be replaced by “stormwater management practices.”

*Question A-48:* Two additional possible answers should be added: 1.) plumbing codes and 2.) private/municipal ownership conflicts, including conflicts over public rights of way.

*Question A-51 & A-53:* Replace “retention practice” with “management practices” and consider combining the two questions.

*Question A-54:* This question should be relocated to the section labeled “retrofit of stormwater management practices.” The term “builders” should be replaced with “developers.”

*Question A-55:* A choice of “Unknown” should be added to the available answers. Acquiring this information could be burdensome for MS4s that do not maintain a database of private stormwater controls. Additionally, the term “private” should be clarified to include Homeowners Associations (HOAs) or Property Owner Associations.

*Question A-57:* This question should also take into account the issue of whether HOAs ultimately have the resources and wherewithal to inspect and maintain the stormwater control practices.

*Questions A-55 – A-57:* These questions should be moved to the front of the survey where information is collected about the MS4 system.

*Question B-3:* Mosquito control should be added as a possible option.

*Question B-4:* This question is not specific enough to understand the total effort associated with municipal stormwater programs. The question should express effort in terms of labor categories, i.e. engineer/scientist, maintenance crews, and in terms of total person hours per week per category in a typical week or month. This information is vital to understanding both the effectiveness of existing programs and the level of effort associated with implementing and enforcing effective stormwater management controls.

*Question B-8:* Fees can vary depending on the project type, size and requirements. Some cities have an administrative fee as well as an hourly fee for review.

Please do not hesitate to contact me at 202-533-1803 or [kjones@nacwa.org](mailto:kjones@nacwa.org) if you have any questions or would like to discuss these comments further. NACWA looks forward to working with EPA to finalize this ICR and to providing additional input during the upcoming rulemaking process.

Sincerely,

A handwritten signature in black ink that reads "Keith J. Jones". The signature is written in a cursive, flowing style.

Keith J. Jones  
General Counsel