

EXECUTIVE COMMITTEE

PRESIDENT

Kevin L. Shafer

Executive Director

Milwaukee Metropolitan

Sewerage District

Milwaukee, WI

VICE PRESIDENT

Jeff Theerman

Executive Director

Metropolitan St. Louis

Sewer District

Saint Louis, MO

TREASURER

David R. Williams

Director of Wastewater

East Bay Municipal

Utility District

Oakland, CA

SECRETARY

Suzanne E. Goss

Government Relations Specialist

JEA (Electric, Water & Sewer)

Jacksonville, FL

PAST PRESIDENT

Marian A. Orfeo

Director of Planning

& Coordination

Massachusetts Water

Resources Authority

Boston, MA

EXECUTIVE DIRECTOR

Ken Kirk

June 9, 2010

U.S. Environmental Protection Agency

Water Docket

Mailcode: 28221T

1200 Pennsylvania Avenue NW

Washington, DC 20460

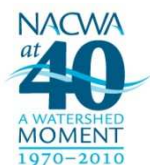
Attention: Docket ID No. EPA-HQ-OW-2009-0817

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on the revised 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 submitted comments on the previous version of the ICR and is pleased to see that some of our suggestions were incorporated in the revised version. However, NACWA and its public agency members with stormwater management responsibilities continue to have concerns with the proposed questionnaire, as outlined below.

NACWA's comments have been compiled by members of the Association's Stormwater Management Committee and apply primarily to the Regulated Municipal Separate Storm Sewer System (MS4) Questionnaire. 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. NACWA continues to believe that EPA is underestimating the burdensome nature of the survey form on municipal stormwater agencies and the significant time and resources it will take to complete the form. As stated in our first set of comments, the survey form is extremely extensive, the revised version even more so in that it is longer and more detailed than the original version. Additionally, many stormwater agencies are currently experiencing staffing shortfalls due to layoffs, furloughs, and hiring freezes at the municipal level, further impacting their ability to devote the needed resources to complete the ICR request. Many stormwater utilities may also be involved in other large efforts placing a strain on limited staff and financial resources, such as those localities within the Chesapeake Bay



currently working on development of Watershed Implementation Plans for the Chesapeake Bay total maximum daily load (TMDL).

Given all these considerations, NACWA believes EPA must look at ways to account for the significant resource burdens that completing this ICR will place on municipal stormwater agencies and offers the following three suggestions. First, EPA should explore ways to streamline the survey form to reduce the amount of time needed to complete it. Second, EPA must provide a minimum of 90 days for respondents to complete the ICR – 60 days will simply not be enough time for many utilities to complete the form, particularly smaller agencies with less staff resources. Third, EPA must remain flexible in allowing extensions on a case-by-case basis for the submittal of responses when requested by individual responding agencies.

2. Some NACWA members that serve multiple jurisdictions and have multiple co-permittees on an MS4 permit are confused about how to answer the survey form. As an example, one NACWA member is a regional sewer authority providing both wastewater and stormwater services to two different counties: County A and County B. In County A, which is served by 100% combined sewers and is exempt from MS4 rules, the NACWA member provides wastewater services only. In County B, which has some combined sewers but is subject to Phase II stormwater regulations administered by a state agency with an MS4 permit issued under a co-permittee arrangement, the NACWA member is a co-permittee with 60 other municipalities on the MS4 permit. In reviewing the proposed questionnaire, it is not clear to this NACWA member whether it should answer the questions based solely on its own authority or whether it is to complete the form on behalf of all its co-permittees. If the NACWA member completes the form based solely on its own authority, there will be some questions that do not apply but for which a “not applicable” response is unavailable. For example, the NACWA member agency does not control land disturbance permitting or planning or zoning determinations, as these authorities are provided by the co-permittees. Thus the NACWA member, if answering based on its own authority, could not answer these questions. However, if the NACWA member was to complete the survey form on behalf of all the co-permittees, the answer to the same question could result in 60 different possible responses, and thus the regional agency would need guidance from EPA on how to provide a composite response. NACWA urges EPA to provide some additional clarity on how stormwater agencies in these types of co-permittee situations should answer the questionnaire.

3. It is very helpful in completing the questionnaire when EPA provides some additional context as to why it is asking certain questions and what kind of information it is seeking. Example of this can be found on page 17 at the beginning of the “Extent of Coverage” section and on page 34 at the beginning of the “Specific Stormwater Controls” section. NACWA encourages EPA to include such additional explanations wherever possible in the survey form to help clarify for responding agencies why the information is being requested and provide valuable context for the subsequent questions.

4. Once EPA has finalized the ICR and distributed it to stormwater utilities for completion, NACWA strongly encourages EPA to share the list of those agencies that receive the questionnaire. Such action by EPA will not only help NACWA and other municipal groups in providing any needed assistance to those municipalities that are asked to complete the ICR but will also contribute to the transparency of the overall rulemaking process. Administrator Jackson has emphasized the importance of transparency in all EPA operations and NACWA believes that making the list of ICR respondents publicly available is a key component to a transparent rulemaking effort.

Specific Comments:

Question A-5: One NACWA member reports that they have completed five years of their first permit term but the permit has expired and a second MS4 permit has not yet been issued. How should a utility in such a situation answer this question? The answer options provided do not appear to account for utilities currently operating under an administratively continued permit.

Question A-6: Additional guidance is needed on how to complete this question. For instance, how should co-permittees be handled under this question? Also, would storm sewer systems for large institutions like universities and hospitals that are nested within existing permit coverage be included under the second bullet point (separate storm sewer that is not permitted)?

Question A-7: Additional guidance is needed on this question as well. In the situation where a stormwater agency has a permit based on jurisdictional boundaries (second answer choice), which is the same as a sewer district (third answer choice), subject to the limits of a combined sewer watershed area (fourth answer choice), should the agency check all three answer choices?

Question A-10: It is not clear whether this question is related to permit requirements or the activity itself. NACWA recommends replacing the term “apply to” with “are required within” or “are implemented within.”

Question A-13: To determine the effectiveness of the stormwater program, EPA should define what level of specificity is requested in order to check a particular box. Is simply implementing a program sufficient? For example, is finding and eliminating one or numerous illicit discharges adequate to show effectiveness in protecting waterbodies from stormwater impacts? Or is a public involvement activity in which a number of tons of trash removed adequate to check the box? Is a specific study required? How comprehensive and conclusive does the evaluation or measure need to be? What consideration does a 303(d) listed stream imply in efforts “to protect waterbodies from stormwater impacts?”

Question A-18: Add “Stream inspections” and/or “outfall inspections” to this list, as they are important components of the illicit discharge program.

Question A-20: What is the purpose of this list of records? Why was this list selected? Are MS4s supposed to answer the “inspection” and “spill response” items based on municipal operations or community enforcement programs, or both?

Questions A-26, A-41, and A-44: Define project size to include the property boundary, development footprint, impervious area, or land disturbance area.

Question A-50: How formal does the retrofit program need to be to qualify for a “yes” answer? What if some of the boxes in questions A51 and A54 exist and can be checked, but they are not components of a specific document or other articulated program? Would rain barrel sales and rain garden promotional efforts be considered a retrofit program if the installations are purely voluntary?

Question A-51: How is “stream restoration” (5th bullet) defined? Does this include simple bank stabilization projects or more comprehensive, systematic planning related to a geomorphic analysis and solution?

Question A-57: NACWA suggests deleting the word “requirements” from the “native vegetation/landscaping planting requirements” option in the list of stormwater controls. None of the other stormwater controls are listed in question 57 as “requirements.”

Question A-60: It may be helpful to add a component to this question that asks whether misconceptions among the public and stakeholders about retention practices are also a factor preventing their use. Some NACWA members are discovering that in many cases a legal requirement may not explicitly prevent a particular practice but nevertheless these practices are still not being approved due to other factors.

Question A-66: It is unclear where a respondent that answers “no” to this question should next answer. No reference location is listed.

Question A-68: It is unclear how to answer this question in a co-permittee situation. Should the question be answered based on the stormwater agency only or should it be answered on behalf of the co-permittees?

Questions A-69, A-70, A-71: The focus in these questions on “insufficient capacity” is problematic. Flooding is not just a function of system size but also time of concentration and land use. The questions should reflect these other potential contributors to flooding. Furthermore, Question A-71 does not offer a response choice for three or four times per year. Unlike question 70, question 71 also does not distinguish nuisance flooding of roads from flooding that causes property damage. EPA should consider combining questions A-70 and A-71 into a table to indicate frequency for each type of flooding.

Question A-73: What is “stormwater outfall monitoring” intended to capture - Phase I MS4 chemical analysis at the outfall, and/or Phase II MS4 IDD dry weather screening? The difference between the two is significant, but the vague definition would not distinguish between them. Also, it appears this questions duplicated question A-77?

Question B-3: This question asks for spending concerning activities under the stormwater budget, however, the list does not include: capital expenses for new storm sewers, capital for facility replacement, maintenance costs for cleaning sewers, or maintenance costs for repairing sewers. Without these items, the activities listed will not equal 100% of the stormwater related budget figure, unless “stormwater related” really means “regulatory items” rather than all actual stormwater related budgeting. “Stormwater related” should be defined as regulatory items only, or capital and maintenance categories should be added to this question.

Question B-8: What if there is no debt financing for stormwater? A “not applicable” response should be added.

Please do not hesitate to contact me at kjones@nacwa.org or 202/533-1803 if you have any questions or would like to discuss these comments further. NACWA looks forward to providing continued input to EPA during the rulemaking process.

Sincerely,



Keith J. Jones
General Counsel