



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

DEC 08 2010

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

Tom Cochran
CEO and Executive Director
The United States Conference of Mayors
1620 I Street
Washington, DC 20006

Dear Mr. Cochran:

Thank you for your November 4, 2010 letter and the extensive and thoughtful recommendations provided in the enclosed "Local Government Recommendations to Increase CSO/SSO Flexibility in Achieving Clean Water Goals." We appreciate your member cities' continued commitment to our shared goal of protecting public health and the environment from raw sewage discharges from municipal sewer systems.

As we all recognize, raw sewage overflows into our nation's urban waters present a significant threat to public health and the environment, often contributing to beach closures, shellfish bed closures, contamination of drinking water supplies and human disease due to exposure to pathogens in the sewage. We appreciate your willingness to work with us to address these problems, protect your citizens, and achieve compliance with the Clean Water Act as expeditiously and efficiently as possible.

We recognize that reducing or eliminating sewage overflows from combined and separate sanitary sewers often requires municipalities to make a significant long-term investment in sewer infrastructure improvement, as well as improved operation and maintenance practices. We agree that flexibility is needed when considering the plans and schedules required for these projects and that municipalities' financial circumstances need to be taken into consideration, especially in these difficult economic times. For example, we recently modified a consent decree with the City of Indianapolis to recognize opportunities for cost-effective savings, as described further below.

We also agree with and are enthusiastic about working with you to promote opportunities to integrate green infrastructure solutions into the long-term plans that are developed to address sewer overflow problems. Green infrastructure solutions to reduce and capture stormwater runoff can make a significant contribution to reducing sewer flows and water contamination, as well as improving the urban environment and

neighborhoods. Green infrastructure promotion is a high priority for EPA and DOJ, and we are very receptive and proactive in considering green infrastructure solutions when working with municipalities to develop long-term control plans and consent decrees. For example, green infrastructure is a significant part of the Clean Water Act consent decree we entered into with Kansas City, Missouri, as further described below.

Your Recommendations request that EPA and DOJ "clarify the exercise of existing flexibility" to EPA and DOJ enforcement personnel "when engaging local entities concerning adoption of CSO control strategies." You highlighted four key areas for consideration: (1) evaluating the financial capability of cities; (2) selecting an appropriate level of control for sewer overflows; (3) maximizing credit for and promoting green infrastructure solutions to overflow problems; and (4) recognizing and considering trade-offs between energy intensive solutions to controlling overflows and their associated non-water related environmental impacts. We appreciate your thoughtful analysis and recommendations and look forward to working with you to address these issues. In the meantime, we offer the following general responses.

Evaluating the Financial Capability of Cities

Your Recommendations suggest that EPA should exercise the existing flexibility provided in the CSO Policy and the *1997 CSO Guidance for Financial Capability Assessment and Schedule Development* to determine financial capability and to allow for longer implementation schedules. EPA and DOJ agree that there is flexibility under the law and applicable federal policies and guidance to consider the unique circumstances affecting each community. We agree that limits on a municipality's ability to raise funds and consideration of the costs of improvement relative to the municipality's current financial conditions should be part of the evaluation that DOJ and EPA make in each case when negotiating options for control and appropriate compliance schedules.

EPA and DOJ will consider all relevant information when evaluating potential compliance schedules, and exercise flexibility for the circumstances presented in each particular case. When a municipality believes that there are unique circumstances that would require consideration of a longer implementation schedule, we encourage the municipality to submit documentation of its unique financial conditions. We will develop a schedule to account for the city's financial constraints while addressing sewer overflows in an expeditious manner. Our experience to date has been that schedules longer than 20 years generally have not been necessary to accommodate municipalities' fiscal constraints.

Cost-Effective Controls

As you probably are aware, under EPA's Combined Sewer Overflows (CSO) Policy, municipalities must conduct an economic analysis for a range of control alternatives with a goal to determine how they can meet the CWA's technology-based and water quality-based requirements in the most cost effective manner possible. This

type of measured economic analysis helps us understand what the appropriate cost-effective CSO controls may be for each particular community.

Your Recommendations state that it is EPA's practice to require municipalities to impose costs of two percent or more of median household income on their citizens to fund sewer overflows controls. We want to assure you that we do not have or apply such an automatic rule. We apply the case-specific approach described above to each case as part of our evaluation when considering options and reviewing the selection of control alternatives. We hope you have seen examples of our commitment to cost effective solutions such as the recent modification to the Indianapolis, IN consent decree. The modifications to a 2006 consent decree will make the Indianapolis sewer system more efficient, leading to major reductions in sewage contaminated water at a savings to the city of approximately \$444 million.

Promoting and Maximizing Credit for Green Infrastructure

EPA and DOJ strongly believe that green infrastructure presents an exciting opportunity for stormwater management approaches that help eliminate CSOs in a cost-effective manner, while simultaneously securing a host of important environmental and community benefits, including improved water and air quality, increased energy efficiency, green spaces and economic development. For these reasons, EPA is committed to the use of green infrastructure projects in CSO settlements wherever it is feasible and appropriate. EPA and DOJ strongly encourage all CSO communities to consider green infrastructure, as part of an integrated approach to CSO control. EPA has a number of resources available to assist communities in assessing the potential for green infrastructure and developing plans for incorporating green and gray approaches in an overall control strategy. We plan to expand the range and availability of green infrastructure resources for use by CSO communities and would like your input on where such resources might best be applied.

Your Recommendations highlight the importance of gaining public support for the goals of the Clean Water Act. We agree that settlements that embrace green infrastructure provide important additional tangible benefits and amenities to the public. As your paper recognizes, we have already incorporated into our settlements green infrastructure projects to address overflows, and this trend is growing. EPA and DOJ are willing to consider additional flexibilities in compliance schedules on a case-by-case basis to allow for adequate time to determine effectiveness of proposed green infrastructure components and to implement additional controls, if necessary. The Kansas City, MO settlement, which incorporates a significant green infrastructure component, is evidence of EPA's flexibility. EPA is currently discussing significant green infrastructure projects with several other communities as well.

Recognizing Carbon Footprint / Climate Change Impacts of Potential Solutions

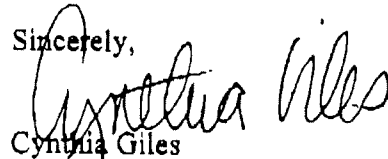
EPA recognizes that many communities are already addressing climate change mitigation and adaptation strategies. We agree with the Conference of Mayors that considering carbon footprint and climate change impacts is extremely important for all

communities in all of their activities. EPA would like to work with you to explore ways to appropriately include climate change considerations into our deliberations regarding the nature and scope of CWA compliance plans.

EPA and DOJ recognize that many municipalities across the country are currently facing difficult economic conditions. Please be assured that we do and will continue to consider the unique challenges to municipalities in the current economic circumstances, as we work together to reach appropriate long-term agreements to address CSO-related problems in the most efficient and protective way to ensure compliance with the Clean Water Act. As we previously discussed, we suggest convening a workgroup comprised of the appropriate staff from EPA, DOJ and your organization to discuss these issues and opportunities further.

We look forward to a continued dialogue on these issues.

Sincerely,



Cynthia Giles
Assistant Administrator
Office of Enforcement and
Compliance Assurance