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September 23, 2016

Lisa Biddle

Water Permits Division

Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Ave, NW

Washington, DC 20460

Submitted via [www.regulations.gov](http://www.regulations.gov)

**Re: Docket EPA-HQ-OW-2016-0376, Public Notification for Combined Sewer Overflows in the Great Lakes**

Dear Lisa:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the development of requirements for public notification of combined sewer overflows (CSOs) into the Great Lakes. NACWA represents the interests of nearly 300 publicly owned wastewater treatment agencies nationwide, including 30 utilities that have CSO discharges into the Great Lakes.

Section 425 of the Consolidated Appropriations Act of 2016 ("Section 425") required EPA to work with the Great Lakes states to create CSO public notification requirements for the Great Lakes. EPA must determine the method of the notice, the contents of the notice (to include date, time, and volume of the discharge and any public access areas affected), and the requirements for public availability of the notice. In addition, EPA must work with the states to develop a follow-up notice requirement to provide the cause of the discharge, plans to prevent a reoccurrence, and an annual list of utilities submitting a follow-up notice.

NACWA's utility members are committed to protecting the environment and public health, and are on the front lines every day in providing these services to their communities. NACWA is supportive of providing public notification of CSOs in a manner that is appropriate for each community and utility. However, there are a number of complex factors, as outlined in more detail below, that determine what type of notification is more appropriate for specific communities and utilities. It is therefore critical that the requirements that EPA develops acknowledge the need for this site-specific analysis.

NACWA was intimately involved with the drafting of the language of Section 425 and is very aware of Congress's intent behind the language. Congress was focused on providing maximum flexibility in notification requirements, and Congress provided EPA with considerable leeway in determining how utilities must provide public notification of CSOs.

Given the tremendous variation in utility size and staffing, NACWA asks that EPA establish flexibility in the requirements to allow utilities to determine the approach that works best for their infrastructure and their communities. NACWA also urges EPA to develop reasonable requirements that will not unnecessarily divert utility resources from their work to manage and control CSOs. EPA should allow an opportunity for public comment on the requirements, and ensure that the requirements only apply to utilities that have CSO discharges into the Great Lakes. NACWA's comments below provide specific information on the list of topics and questions that EPA requested input on in its *Federal Register* notice.

#### ***"Immediate" Notification is Not Required***

In the *Federal Register* notice, EPA's list of topics and questions repeatedly uses the term "immediate notice." Since the word "immediate" does not appear in Section 425, EPA has not received direction from Congress to develop requirements for "immediate" notice. During the legislative process, the term "immediate" was discussed extensively, since it was included in the original legislative proposal. Congress chose not to include "immediate" in the final legislation, thereby declining to require "immediate notice."

The deliberate action of Congress to omit "immediate" from the legislation, and the nature of the conversations that took place over use of the word – of which NACWA was a key part – underscore that Congress intended the notification to be site-specific, in a reasonable timeframe, and determined by public health risk, not "immediate" or in an arbitrary time period. NACWA asks that EPA eliminate the term "immediate" from all references to and discussions of the public notification requirements for Great Lakes CSO discharges.

In the context of the timing for notification, EPA requested comment on notifying the NPDES permitting authority of any CSO discharges, citing the requirement in 40 CFR 122.41(l)(6) to report certain discharges to the NPDES authority within 24 hours. This 40 CFR 122.41(l)(6) requirement is irrelevant to the Great Lakes CSO public notification, since it only applies to "any noncompliance which may endanger health or the environment," with information "provided orally within 24 hours from the time the permittee becomes aware of the circumstances." CSOs are permitted discharges and therefore are not included in this existing requirement – only CSOs beyond what is allowed by permit that endanger health or the environment would be included. The scope of this 24-hour reporting requirement in 40 CFR 122.41(l)(6) is not expanded by Section 425 and cannot be applied to any other CSO discharges.

#### ***Purpose of Notification Should Determine Timing and Content***

The purpose of the notification should determine when and how that notification will occur and what additional information should be included. If the purpose of the notification is to protect public health and keep people out of recreational areas during CSOs, then public education and advance notice of CSO risk is most important. This public education can be done through appropriate signs posted at recreation areas and announcements prior to a predicted rainfall that will likely result in a CSO. Utilities can also provide general

information about the sources of bacteria in water bodies, how CSOs can affect water quality, and what the utility is doing to address CSOs.

If the purpose of notification is to improve data collection about CSOs in the Great Lakes, then the timing of the notification is not as important. Utilities can be given adequate time to collect and analyze data and determine the volume and timing of the CSO. Since the duration of a CSO cannot be determined in advance, it is impossible for utilities to report CSO volume until the discharge has ended. Flexibility is needed for reporting CSO data that is not time-sensitive.

Utilities should be given a reasonable time period to report volume and other data, given the variance in size and staffing of the utilities in the Great Lakes region. Smaller utilities may not have staff available on nights, weekends, and holidays to collect, analyze, and report data. Larger utilities may have more CSO outfalls and regulators to monitor or model, requiring additional time for data analysis.

#### ***Modeling and Monitoring of CSOs are Equally Acceptable***

Congress did not specify how the information required in notifications should be determined by utilities. Again, flexibility is needed for utilities to tailor the approach that works best with their infrastructure and staff. Real-time monitoring and modeling of combined sewer systems can both be effective methods for determining the occurrence and characteristics of CSOs. However, both present different problems for utilities. Modeling is not always an accurate depiction of what actually occurs in a system, and models can be difficult to upgrade and calibrate. Sensors used for real-time monitoring can be difficult to maintain due to the high flows, debris, remote locations, and other harsh environmental conditions in a combined sewer system. Installing a real-time monitoring system also does not make sense for a utility that is working to eliminate CSOs or is otherwise performing significant work on its system. The approach – or combination of approaches – must be decided by each individual utility.

#### ***Other Information in Notifications Not Needed***

In the CSO public notification, EPA should only require the information requested by Congress in Section 425. EPA should consider that CSO discharges are not the only sources of bacteria in the Great Lakes, and in some cases, CSO discharges may even be insignificant compared to other sources. Although recreational water users might like notification of when a CSO event has ended, the inconsistent nature of CSO flow makes this difficult or impossible, and this type of notification might also give a false impression that the water is safe after a CSO event has concluded. Due to other bacteria sources, though, the safety of the recreational waters cannot be determined based on CSO duration or volume. An “all clear” type of requirement would place an unnecessary burden on utilities and could cause additional risks to public health.

#### ***Annual Reports Should be the Responsibility of the States***

Section 425 requires that EPA work with the states to include “annual publication requirements that list each treatment works from which the Administrator or the affected State receive a follow-up notice.” Since the utilities have already submitted the required information about each CSO discharge to their permitting authority, the annual report should be compiled by the state or other permitting authority. Requiring utilities to submit this information again at the end of each year would be duplicative and unnecessary.

Thank you for your consideration of these comments. Please contact me at 202-533-1836 or [cfinley@nacwa.org](mailto:cfinley@nacwa.org) if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Cynthia A. Finley". The signature is written in a cursive, flowing style.

Cynthia A. Finley, Ph.D.  
Director, Regulatory Affairs