October 31, 2018

U.S. Environmental Protection Agency
EPA Docket Center
EPA-HQ-OW-2018-0420

Via regulations.gov: Docket ID No. EPA-HQ-OW-2018-0420

RE: Stakeholder Input on Peak Flows Management

The Association of Clean Water Administrators ("ACWA") is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act ("CWA"). As the primary entities responsible for carrying out CWA programs, states are very interested in national regulatory or policy positions that may impact their ability to implement the CWA in their states.

The August 31, 2018 Federal Register Notice indicates EPA is requesting input on "possible approaches to updating the National Pollutant Discharge Elimination System (NPDES) regulations related to the management of peak wet weather flows at Publicly Owned Treatment Works (POTWs) treatment plants serving separate sanitary sewer collection systems." While states have historically expressed a diversity of opinions on this issue, more than half the states have indicated they could support EPA exploring a blending rule, depending on how blending was defined.[1]

Scope of the Rule

States generally support limiting the current rulemaking to separate sanitary sewer systems.[2] While there may be opportunities to improve and enhance the combined sewer system rules, there is recognition that Separate Sewer Systems are managed differently than Combined Sewer Systems. In the early stages of this rulemaking, states would support further discussion and consideration of both technology and water quality-based approaches. Limiting the discussion to one side of the equation may undermine information exchange that provides a complete picture of all the options and considerations that need to go into this rulemaking.

[1] See ACWA *Peak Wet Weather Flow Management Summary*, October 11, 2018 attached.

[2] At least one state recognized that a blending rule may need to be considered in the context of combined sewer systems as well.

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Define Peak Flow Management, Blending, and Bypass

States request greater certainty and clarity regarding peak flow management. States recognize that increased influent rates at POTWs during wet weather events can create operational challenges and detrimentally impact treatment processes. There are a number of practices and processes that have been utilized over the years to manage these peak wet weather flows, some of which may have been deemed a bypass violation under the CWA. States would like to see a brighter line drawn between allowable blending and an unallowable bypass. Most states would not support a definition for blending that would allow the mixing of completely untreated waste with partially treated effluent, and then discharging it. However, roughly ¾ of the states surveyed indicated future support for a blending rulemaking, depending on how blending was defined. It should be noted that there are some states that currently do not allow blending and would likely not support a rulemaking that does.[3]

Other Considerations

For those states that would support a blending rule, they would also advocate for further consideration of appropriate operations, infrastructure, asset management, maintenance programs, inflow and infiltration reduction efforts, and general feasibility. Beyond traditional considerations, many states view the following factors as relevant to the analysis as well: size of the wet weather event; requirements that permit limits must be met; facility design for blending; limited use of blending as a temporary – not permanent – solution; and not creating any new environmental concerns.[4] Many states also support consideration of increased monitoring, reporting, and notification requirements when a facility blends.

There is general consensus among states that the permitting authority make the decision as to whether blending should be allowed. Some states believe blending should only be allowed if there is no feasible alternative, while others believe blending should be allowed any time doing so provides a net environmental benefit. A couple of states prefer the use of enforcement discretion over any rule that would allow a bypass. At least one state supports the creation of wet weather water quality standards to address wet weather issues. Several states indicated the rule needs to address blending within tertiary treatment systems as well. EPA should avoid developing a rule that undermines other state initiatives.[5]

Questions for EPA

Several questions were raised during ACWA's discussions, including: 1) Whether EPA's policy of discouraging blending has changed; 2) Will a blending rule significantly increase the number of water quality standards variances issued; 3) How will EPA avoid sending mixed signals to the public; 4) What role does "no feasibility analysis" have going forward; 5) Is there any data showing that blending increases the amount of viruses coming out of the facility; and 6) Should we be linking cost-benefit of blending to the designated uses in the affected watershed?

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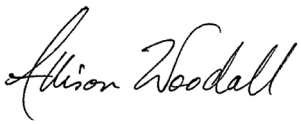
[3] Id.
[4] Id.
[5] States recognize that tradeoffs may be occurring at facilities. If a facility were required to install additional clarifiers to ensure blending does not occur, the costs may prevent the facility from installing a new phosphorus treatment system.

Conclusion

Thank you for the opportunity to provide comments. ACWA and most states support greater clarity and certainty around peak flow management issues. As this rule is developed, ACWA requests that EPA periodically meet with states to share information the agency has learned and to consider any intended and unintended impacts a rule might have on state programs. As with all ACWA comment letters, we encourage the agency to also consider recommendations provided by individual states. If you have any questions regarding this comment letter, please contact ACWA Deputy Director, Sean Rolland at srolland@acwa-us.org or (202) 465-7179.



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