

**U.S. EPA STORM SEWER OVERFLOW (SSO)
FEDERAL ADVISORY COMMITTEE (FAC) MEETING
OCTOBER 18-20, 1999
Williamsburg, Virginia**

The Sanitary Sewer Overflow (SSO) Subcommittee of the Urban Wet Weather Flows Federal Advisory Committee (FAC) held a meeting October 18-20, 1999 in Williamsburg, Virginia. The group met to review five issue papers that had previously been developed and distributed by EPA, and to provide comments on the approach for EPA. The five papers primarily addressed draft standard National Pollutant Discharge Elimination System (NPDES) permit conditions that EPA intends to include in a notice of proposed rulemaking. EPA stressed its need to move a package forward quickly in response to President Clinton's directive to publish a proposed rule on SSOs and sanitary sewer collection systems by May, 2000. This is a summary of discussions at the meeting. A list of participants is attached to this summary. The Subcommittee concurred that since many agreements were reached at this meeting that there was no need for another meeting. However, several members of the Subcommittee requested that the Subcommittee be given the opportunity to review key revised documents prior to publication of the proposed regulations.

I. EXECUTIVE SUMMARY

This summary provides a brief overview of the discussion on each major issue discussed at the meeting, provides a summary of what the Subcommittee agreed to on each issue, and addresses what will be the next steps for each document. Flip chart notes from the meeting are also available upon request to EPA (Debbie Cash at ((202) 260-5820; (Cash.Debbie@epa.gov)).

The major action from this meeting was that the Subcommittee unanimously recommended an approach for EPA to take in developing an SSO proposal. Following is the statement to which all members present agreed:

The members of the SSO Subcommittee recommend to EPA the substance of the CMOM, Prohibition, Record Keeping, Reporting and Public Notification, Remote Treatment Facilities documents, and Satellite Collection Systems and watershed management agreed principals. These have been discussed and last modified during the SSO meetings of October 18 - 20, 1999. The committee unanimously supports the basic principles expressed therein, taken as a whole, recognizing that they are interdependent.

EPA thanked all participants for their hard work and dedication to this effort. This agreement will help EPA to develop and promote a proposal for review based on discussions and opinions heard at this meeting.

II. OVERVIEW OF DISCUSSION TOPICS

Section II, Discussion Topics, includes an overview of the discussion on the following topics:

- Capacity, Management, Operations & Maintenance (CMOM)
- Prohibition on Municipal Sanitary Sewer System Discharges
- Wet Weather Treatment/Peak Excess Flow Treatment Facilities (PEFTF)
- Reporting and Public Notification
- Satellite Collection Systems
- Watershed Approach
- Implementation

CAPACITY, MANAGEMENT, OPERATIONS & MAINTENANCE (CMOM)

The Subcommittee began its work using a October 6, 1999 draft CMOM paper. Discussion on the CMOM permit provision focused primarily on the need for a shorter permit condition clearly outlining the goals and expectations of the CMOM program. The Subcommittee agreed that timely and flexible guidance documents were needed to provide details for achieving those goals. Subcommittee members stressed the need for flexibility for different sized systems to choose the method that is best for them, while also having the opportunity to work in cooperation to address problems before enforcement actions are taken. Discussion also focused on the need for EPA to address repeated SSOs, and the need for a trigger that EPA can use to determine when to examine these systems further.

After extensive discussions, the Subcommittee recommended a revised draft CMOM dated October 19, 1999 [a copy of that document is attached to this summary]. The group agreed that even though there may be specific words or phrases that everyone could not agree on, there was general agreement on the framework and approach of the paper, and felt that it should move forward. In addition, EPA indicated it would continue to evaluate whether and how the CMOM provision should be modified for small municipalities. EPA expressed that there was understanding of the various viewpoints on the document, and that EPA representatives would do what they could to address remaining concerns.

PROHIBITION ON MUNICIPAL SANITARY SEWER SYSTEM DISCHARGES

A draft paper dated April 30, 1999 provided the basis for the Subcommittee's discussion on the prohibition on municipal sanitary sewer system discharges and on the affirmative defense. Discussion on the prohibition provision included when EPA expects an affirmative defense to be available, and whether it can be used repeatedly by a single system. There were many issues discussed in relation to liability and affirmative defense, including who should provide liability protection, how it should be provided, and under what conditions it should be applied. There was much discussion on using the upset and bypass provisions to excuse discharge associated with frequently repeating overflows. EPA clarified that the affirmative defense is not intended to be used each time there is a SSO; repeated SSOs would be addressed through an enforcement order. EPA stated that these provisions are not intended to provide a defense for frequently repeated

SSO problems, but for extreme situations. The Subcommittee could not agree on how much rainfall or other situation would constitute an “extreme event”, but acknowledged that qualification for a defense would vary based on the facts of the case.

EPA clarified that the upset/bypass provision approach would be used to guide language on the prohibition/affirmative defense. EPA specifically noted that paragraph (2) of the 4/30/99 draft mirrored the language in the “bypass” provisions of the secondary treatment regulation and paragraph (3) mirrored the “upset” provisions, and that it was EPA’s intention in using this language to also mirror the protections from 3-party lawsuits. EPA agreed that the approach from the upset and bypass provisions will be used in the section of the prohibition paper that addresses the affirmative defense. EPA assured the group that when the revised paper is available that everyone will have an opportunity to comment on the revision. The group agreed to the general principles of a prohibition, that CMOM program implementation should be considered when applying the defense in the prohibition, and that water quality standards issues will be addressed. The group then agreed to the principles of the revised paper [copy attached].

WET WEATHER TREATMENT/PEAK EXCESS FLOW TREATMENT FACILITIES (PEFTF)

The group examined a draft PEFTF paper, dated September 30, 1999, and four alternative approach papers. The 9/30/99 paper was intended to set out the spectrum of what could be done regarding PEFTFs, and the approach papers laid out the options within that spectrum.

Key areas of discussion included preconditions for approval of a PEFTF; level of treatment/secondary treatment and water quality standards; authorizing PEFTFs through permit or enforcement; whether the facilities should be temporary or permanent; and public participation.

Initial discussions revealed that all Subcommittee members preferred one of the alternative PEFTF approach papers [Approach C]. It was noted that while Approach C did not meet all needs, it was the best of the options. This approach provides more flexibility to systems, and includes targeting of systems that need the most assistance. After significant discussion and revisions to the approach C draft, there was general agreement by the group on the contents of a revised PEFTF paper [copy attached], and that it should move forward. Some of the revisions to the Approach C PEFTF paper included addition of a public participation clause, determination of timely feasible alternatives, addition of a clause regarding public health and sensitive waters, and inclusion of a phrase that states that if a PEFTF could meet all secondary standards requirements, it would be covered by a permit and an enforcement order would not be necessary.

REPORTING AND PUBLIC NOTIFICATION

The Subcommittee identified types of reporting it would like to see under this provision. The Subcommittee’s consensus recommendation was that the following five types of reporting should include:

1. Twenty four hour emergency notification to the public, drinking water suppliers, public health officials, and others.
2. General notice of waters that may be affected (these could simply be posted signs), when there is no imminent danger.
3. Annual reporting that includes the overall number of overflows, streams affected, how CMOM is working overall.
4. An audit report of how the system is working, to be provided every five years with the permit application.
5. Discharge Monitoring Reports (DMRs).

The Subcommittee recommended specific information to be included in each report, when the reports would be required, and who the reports should be sent to. The Subcommittee also agreed to a goal of providing flexibility to small systems where appropriate. EPA noted that it is not wedded to defining a small system as those that serve 1,000 people or less. EPA representatives noted that they must perform an analysis on the number of hours of work imposed by these proposed reporting requirements, and these must pass the Office of Management and Budget's (OMB's) approval to be implemented.

Recommendations were made on effective methods and scope of public notification. The Subcommittee also recommended that the linkage between CMOM requirements and reporting/public notice needs to be clarified. CMOM was suggested as the place to provide details on who/how public notice should occur.

Based on the Subcommittee's discussions, a revised draft was prepared, discussed, modified and agreed to by all [copy attached].

SATELLITE COLLECTION SYSTEMS

The discussion on satellite collection systems focused primarily on three main points. First, the group generally agreed that there must be options for addressing satellite systems, including individual, general, or co-permits in some circumstances. Second, there was agreement that all collection systems should be held to the same level of performance. The Subcommittee recommended that local authorities should be given an initial opportunity to cooperate with one another but that where such cooperation did not bring adequate results, NPDES authorities should have the opportunity to enforce. Third, for the most part the group agreed that individual permits for each and every municipal satellite system would be too burdensome.

EPA clarified the goals to achieve in this approach:

- Bringing private systems up to the same standards as public systems;
- Encouraging and increasing local cooperation;
- Keeping different tools available;
- Allowing the ability to call on EPA or states for enforcement when necessary;
- Recognizing that local authorities have different combinations of legal authority;

- Tracking the legal liabilities for reporting and response; and
- Raising the priority of this issue in states and in EPA.
-

Discussion regarding satellite collection systems did not result in the Subcommittee reaching consensus on a document. However, participants did agree on principles and provided EPA with a framework for what they would like to see included in a program addressing satellite systems. The group recommended a menu of options to include in addressing satellite systems. This includes:

- Pretreatment type of approach - provide incentives for localities to develop authorities to operate on their own.
- Pay-to-play option - Assign increasing fees to those who bring more into the system.
- Cooperation first - There must first be a requirement for satellites to report SSOs, then work with contributors to and operators of the system as to whether or not a CMOM is needed.
- Inter-jurisdictional agreements
- General permits
- Individual permits
- Group permits
- Co-permits (as long as this is not the only option)

WATERSHED APPROACH

EPA representatives expressed that they were open to a watershed approach for dealing with SSOs, and they are soliciting suggestions on how to structure this approach. Subcommittee members recommended that EPA apply the principles in the Urban Wet Weather Flows Federal Advisory Committee's watershed recommendations. EPA explained that it is working on an approach that will be consistent with the new TMDL rule.

Municipalities want the flexibility to set environmental protection priorities on a watershed wide basis. There was also discussion of numerous issues that must be considered if EPA were to develop and implement a watershed approach, including Cryptosporidium, pesticides, groundwater, well head protection, non-regulated sources, sediment contamination, and others. Good water quality data is also necessary to implement a watershed approach, but in many areas this data is not available or is not in a useable format. It was noted that for EPA and the states to use a watershed management approach, they must change their program-by-program approach to permitting and enforcement.

EPA representatives summarized that it sounded as if the Subcommittee members were in favor of a watershed management approach, but had differing ideas on how to get there. The Subcommittee did not develop a specific 'watershed' paper but did endorse the concept of using the watershed approach.

IMPLEMENTATION

The issue of implementation of new SSO policies/regulations was stressed by state representatives. States requested an implementation plan which allows them enough time to change state regulations, policies, permit processes, etc. Subcommittee members also requested that guidance and design manuals be developed or updated as quickly as possible. There was discussion, and then general agreement that there is a need for outreach, education, and training. EPA noted that they have begun implementation under the current regulations in Region 4. EPA representatives noted that while education and outreach are necessary, EPA may not be the most appropriate organization to do this, since it is not EPA's expertise. EPA representatives agreed that they could work with the Water Environment Federation (WEF) and others on documents and training. EPA was encouraged to draw from information that currently exists, specifically from Region 4's program.

SSO FAC MEMBERS IN ATTENDANCE AT WILLIAMSBURG, VA MEETING:

<u>Name</u>	<u>Representative For</u>
Gordon Garner	American Public Works Assoc. (APWA)
Buddy (Thomas) Morgan	Assoc. of Metro. Sewerage Agencies (AMSA)
Erwin J. Odeal	Assoc. of Metro. Sewerage Agencies (AMSA)
John M. Gesswein	Assoc. of State & Interstate Water Poll. Control Administrators (ASIWPCA)
Tom McSwiggin	Assoc. of State & Interstate Water Poll. Control Administrators (ASIWPCA)
Tricia Sheets	Cahaba River Society
Michael B. Cook	USEPA Office of Wastewater Management
Brian Maas	USEPA, Office of Enforcement and Compliance
Peter Lehner	National Assoc. of Attorneys General (NAAG)
Diane Shea	Alternate Rep; National Assoc. of Counties (NAC)
Jack Lynch	National League of Cities (NAC)
George Aponte Clarke	Natural Resources Defense Council (NRDC)
Sarah J. Meyland	NY & TX Citizens' Campaign For the Environment
Mike Wallis	TRI-TAC
Nancy Wheatley	Water Environment Federation (WEF)

OTHER ATTENDEES (Incomplete List):

Diane Regas Assistant Administrator for Water, USEPA

Mike McGhee	USEPA, Region 4
Scott Gordon	USEPA, Region 4
Roy Herwig	USEPA, Region 4
Paul Molinari	USEPA, Region 2
Christopher Sproul	USEPA, Region 9
Stephen Sweeney	USEPA, Office of General Counsel
Charles Sutfin	USEPA, Office of Wastewater Management, Permits Div.
John Lyon	USEPA, Office of Enforcement & Compliance
Kevin Bell	USEPA, Office of Enforcement & Compliance
Alan Morrissey	USEPA, Office of Enforcement & Compliance
Kevin Weiss	USEPA, OWM SSO Team, Matrix Manager
Barry Benroth	USEPA, OWM SSO Team
Sharie Centilla	USEPA, OWM SSO Team
Shellie Chard	Oklahoma Dept. of Environmental Quality
Carl Parrott	Oklahoma Dept. of Environmental Quality
John Fisher	Lawson-Fischer Associates
Mark Hoeke	AMSA
Ken Kirk	AMSA
Carol Kocheisen	NLC
Jim Murray	Wayne County Dept. of Environment
Sharon Thomas	WEF
Tim Williams	WEF
Marty Umberg	MSD Greater Cincinnati
M. Hornbrook	
Dan Askenaizer	
Martha Prothro	Facilitator
Melinda Holland	Facilitator
Suzanne Boccia	Recorder