

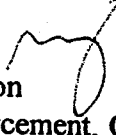


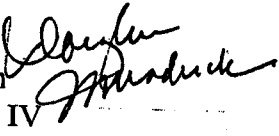
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
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MEMORANDUM

SUBJECT: Pilot Enforcement Approach for
MOM Cases in Region IV

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TO: Water Management Division Directors, Regions I-X
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Regional Counsels, Regions I-X

Overview

This memorandum outlines a pilot enforcement approach developed by Region IV and the Office of Regulatory Enforcement (ORE) to address the challenge of bringing municipal sewer systems into full compliance with the Clean Water Act by eliminating sanitary sewer overflows (SSOs) through Region IV's Management, Operation and Maintenance (MOM) Program. The goal of this enforcement approach is to bring municipal sewer systems into compliance with the law with reduced transaction costs for both EPA and the regulated community in a manner that is consistent with EPA's existing policies, including the Interim Clean Water Act Settlement Penalty Policy (February 28, 1995) and the Enforcement Management System's Chapter X: Setting Priorities for Addressing Discharges from Separate Sanitary Sewers (1996).

The Region IV MOM Program invites municipalities to complete a detailed self-assessment and checklist of key aspects of their municipal wastewater facilities and collection systems, and establish MOM programs and/or develop remedial measures that will work to eliminate sanitary sewer overflows (SSOs) through proper management, operation and maintenance of their sewer infrastructure. The Region's MOM Program looks at all aspects of a wastewater system's management and performance, from system inventory and mapping to flow

monitoring and corrosion detection.¹

In cooperation with all eight Region IV states, Round I of the MOM Program began with the selection of certain impaired watersheds in each state. Once the impaired watersheds were identified, municipalities operating wastewater facilities (including satellite collection facilities) within these watersheds were invited to participate in the program. The MOM Program consists of three phases as described below.

Phase 1 [Initial Assessment]: The initial phase of the MOM Program invites municipalities to complete the previously described detailed self-assessment and checklist of key aspects of their municipal wastewater facilities and collection systems. The assessment looks at all aspects of a wastewater system's management and performance to determine whether basic MOM programs are missing which could be contributing to SSOs. If a municipality declines the invitation to participate in the program and complete the self-assessment, or it fails to timely and adequately complete the assessment, the Region will pursue a traditional enforcement track to identify and address potential violations.

Phase 2 [Administrative Order on Consent/Diagnostic Assessment]: The Region will review the self-assessment done by each participating municipality and determine whether there are aspects of the MOM program that need to be established or improved by the municipality. If such aspects need to be established or improved, the Region will invite the municipality to enter into an administrative order on consent (AOC) to implement the missing or inadequate programs. Because these are essentially management programs rather than infrastructure upgrades, the AOC will be of short duration, generally one to two years, and no longer than three years.²

If, in addition to MOM Program elements that need to be adopted, short term remedial (infrastructure) measures are identified at that time, and those measures can be fully implemented in less than three (3) years, then these remedial measures may also be included in an AOC at this stage. If the self-assessment and checklist indicate that the municipality must undertake significant infrastructure improvements that cannot be fully implemented within three (3) years, the Region will generally proceed directly to a Phase 3 administrative or judicial enforcement

¹ More specifically, the MOM Program looks at peak flow analysis, overflow documentation and reporting, emergency flow control, grease control, pretreatment analysis, manhole inspection, defect analysis, smoke testing, service lateral investigations, hydraulic cleaning, pump station performance and adequacy, system rehabilitation, capacity assurance, equipment and tools management, spare parts inventory and management, customer complaint management, water quality monitoring, and public notification.

² After the implementation period, the AOC may also require an additional two (2) years of periodic reporting on the progress and effectiveness of the implementation of the AOC's requirements followed by a final report summarizing the actions taken and accomplishments achieved pursuant to the AOC.

action to address the compliance problems.

Phase 3 [Long Term Remedial Action]: After Phase 2 is fully implemented, the Region will assess whether long term remedial action is required. If required, the Region will proceed and enter into negotiation for long term remedial measures. If these measures will require five (5) years or longer to implement, the remedial measures will be incorporated into a consent decree; schedules under five (5) years may be addressed in an AOC or judicial consent decree as appropriate.³

Penalty Considerations

As a part of this pilot enforcement approach, the Region intends to exercise the discretion afforded it under Chapter X of the Enforcement Management System (EMS) to defer a decision on whether to assess a civil penalty against a participating municipality until Phase 3. Where a municipality timely and adequately completes the requirements of the Phase 2 AOC, and the implementation of MOM programs and any short term remedial measures adequately address the need for further corrective action, then generally no further action will be pursued for the past non-compliance.⁴

If long term remedial measures are required under a Phase 3 AOC or consent decree, and a municipality has fully participated in the MOM program, penalties will generally be assessed based on a reduced penalty approach. This is intended as an incentive for participation, as the comprehensive efforts by municipalities in meeting the MOM Program requirements will bring about significant environmental results.

The reduced penalty amount for municipalities that have fully participated will be determined as follows. The Region will first calculate a penalty under the Interim Clean Water Act Settlement Penalty Policy (February 28, 1995), using the National Municipal Litigation Consideration (NMLC) where it would benefit the municipality. The gravity component of the penalty figure (or the Table B figure if using the NMLC) will then be reduced by up to 75%. The

³ Consistent with the CSO policy, for all SSO cases where long term remedial action is required, the first consideration in choosing the appropriate enforcement mechanism should be the length of the compliance schedule, rather than the conduct of the municipality. Specifically, AOCs are appropriate for compliance schedules lasting five (5) years or less. However, because AOCs are not subject to the immediate enforcement power of a court, compliance schedules lasting more than five (5) years should be incorporated into judicial consent decrees. Where a municipality is not cooperative, even compliance schedules under five (5) years should be in consent decrees.

⁴ Violations underlying the need for short term remedial (infrastructure) measures will be addressed in accordance with the EMS. Where penalties are assessed for these violations, the reduced penalty approach discussed below will be utilized for violations identified through the MOM self-assessment.

resulting penalty figure will be used as a quick-settlement bottom-line penalty. The justification for this penalty reduction is based, in part, on the substantial efforts required by municipalities to fully participate in the MOM program. The penalty reduction is further justified by the substantial savings in transaction costs to the government that derive from the cooperative resolution of these complex compliance problems. Finally, this penalty approach is appropriate as the municipalities are participating in an audit-like self-assessment and disclosure program, and this penalty approach is similar to the approach in EPA's Audit Policy (May 11, 2000).

This MOM pilot program has only been approved in Region IV. However, municipalities in the other Regions who wish to voluntarily conduct a self-assessment to assist them in evaluating their systems may obtain a copy of the detailed assessment on EPA's website at <http://www.epa.gov/region4/water/wpeb/momproject/index.html>.

We have attached a flow diagram of this approach which helps clarify the process. If you should have any questions, please contact Doug Mundrick at (404) 562-9328, Mark Pollins at (202) 564-4001, Bill Bush at (404) 562-9538, John Harkins at (404) 562-9758, or Joe Theis at (202) 564-4053.

Attachment

cc: Linda Boornazian, OWM
Randy Hill, OGC

MOM Pilot Enforcement Approach

