

Wet-Weather Strategies

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Key Wet-Weather Regulatory Issues

- CSO Policy and Guidance
- Permit Requirements for CSOs
- Enforcement Process
- SSO Policies and New Rule
- Blending Restrictions
- Conference of Mayors Initiative
- New MS4 Requirements

CSO Policy

- Issued in 1994, put into Act in 2000
- Basics – 9 minimum controls
- MUST meet water quality standards
- 2 approaches – presumption & demonstration
- Is presumption still usable?
- Post-construction monitoring
- Use Attainability Analyses (UAAs)

Permit Requirements for CSOs

- Nine minimum controls
- Must meet water quality standards
- Must develop and implement CSO Long-Term Control Plan (LTCP)
- Affordability is key element in determining control measures and implementation schedule for LTCP
- Possible compliance schedule to address violations of WQS while implementing measures in LTCP

Enforcement Process

- EPA vs. State enforcement
- EPA use of Section 308 to issue info requests
- Consent Decrees vs. other mechanisms
- Possible claims – dry weather overflows, violations of WQS, SSOs
- Penalty Policy for municipal parties
- Stipulated penalties for Decree violations

SSO Policies

- Sanitary Sewer Overflows – EPA takes the legal position that they are illegal
- So EPA has objected to putting SSOs in permits – must be dealt with instead as enforcement matter
- SSO provisions in decrees – focus on eliminating SSOs on specific schedule
- Role of Capacity, Management, Operation and Maintenance (CMOM) plans
- Note changes in basement backup policies

EPA SSO Rule

- Fed Reg notice issued on June 1
- Comments were due August 2
- Public meetings around country, but not in Region V
- Issues
 - Monitoring, reporting and recordkeeping
 - CMOM plans & asset management
 - Coverage for satellite collection systems (NOTE EAB decision in Upper Blackstone)
 - Exception to discharge prohibition for SSOs caused by exceptional circumstances
 - Requirements for peak flows at POTWs (blending)
- Proposed rule expected in mid-2011

Blending Restrictions

- What is blending - taking in wet weather flow, giving it primary treatment & disinfection, then recombining with effluent from secondary treatment before discharge
- EPA position has varied, but as most recently stated by HQ: that action is a “bypass” and is not allowed unless you show that there is “no feasible alternative” (NFA)

Conference of Mayors Initiative

- Barnes & Thornburg and LimnoTech worked with Conference of Mayors to develop set of recommendations for EPA to issue
- Recommended statements by EPA/DOJ would emphasize flexibility in existing EPA guidance on CSO/SSO issues
- NO need for changes in Clean Water Act, EPA regulations or CSO Policy

Mayors – Cost/Benefit

- Select level of control based on incremental cost/benefit analysis, not just affordability
 - Choose cost-effective control options
 - Consider carbon footprint of controls
 - Focus on performance criteria, not details of municipality's control program

Mayors – Ability to Pay

- Use flexibility in looking at ability to pay
 - Consider limits on municipal ability to raise funds, including bonding problems
 - Consider impacts on low-income residents, including total shelter costs
 - Consider cumulative costs of various water quality control programs, including stormwater
- Allow schedules longer than 20 years
 - Can lead to more affordable controls, and sometimes increased loading reductions
 - Promotes use of green infrastructure

EPA Stormwater/MS4 Rules

- EPA announces plan to issue new stormwater rules in final form by Nov 2012 – proposal out in late 2011
- Focus is on tightening requirements for development, redevelopment, and existing development, including addressing both construction and post-construction runoff
- EPA goals in new rulemaking:
 - Expand universe of regulated discharges
 - Establish substantive post-construction requirements for new and redevelopment
 - Develop single set of consistent requirements for all regulated MS4s
 - Address stormwater discharges from existing development – consider imposing retrofit requirements
 - Consider additional requirements for sensitive areas, such as Chesapeake Bay

Conclusions

- EPA taking stronger role in shaping LTCPs for CSO communities
- Water quality standards are driving process, so need to consider UAAs
- Press for flexibility on affordability
- Consider how to integrate decisions on CSOs, SSOs, MS4s, blending, POTWs
- Route through enforcement can be long – keep in mind all of your options at each step
- Consider participating in Conference of Mayors initiative – need for input, examples, support
- Provide input to EPA rulemakings on new SSO and MS4 requirements

Questions?

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