

ADMINISTRATIVE RULES FISCAL ESTIMATE AND ECONOMIC IMPACT ANALYSIS

Type of Estimate and Analysis

Original Updated Corrected

May 4, 2012

Administrative Rule Chapter, Title and Number

NR 110, Sewerage Syst.; NR 205, Gen'l Prov.; NR 208, Compl.Maint.; NR 210, Sewage Trtmt. Works

Subject

Revision and creation of rules on the operation and maintenance of sewage collection systems

Fund Sources Affected

Chapter 20 , Stats. Appropriations Affected

GPR FED PRO PRS SEG SEG-S

Fiscal Effect of Implementing the Rule

No Fiscal Effect

Increase Existing Revenues

Increase Costs

Indeterminate

Decrease Existing Revenues

Could Absorb Within Agency's Budget

Decrease Costs

The Rule Will Impact the Following (Check All That Apply)

State's Economy

Specific Businesses/Sectors

Local Government Units

Public Utility Rate Payers

Would Implementation and Compliance Costs Be Greater Than \$20 million?

Yes No

Policy Problem Addressed by the Rule

SEE ATTACHMENT – PART I

Summary of Rule's Economic and Fiscal Impact on Specific Businesses, Business Sectors, Public Utility Rate Payers, Local Governmental Units and the State's Economy as a Whole (Include Implementation and Compliance Costs Expected to be Incurred)

SEE ATTACHMENT – PART II

Benefits of Implementing the Rule and Alternative(s) to Implementing the Rule

SEE ATTACHMENT – PART III

Long Range Implications of Implementing the Rule

SEE ATTACHMENT – PART IV

Compare With Approaches Being Used by Federal Government

SEE ATTACHMENT – PART V

Compare With Approaches Being Used by Neighboring States (Illinois, Iowa, Michigan and Minnesota)

SEE ATTACHMENT – PART VI

Name and Phone Number of Contact Person

Duane Schuettpelz, Bureau of Water Quality Management, Dept. of Natural Resources; email: duane.schuettpelz@wisconsin.gov

**ATTACHMENT TO ADMINISTRATIVE RULES
FISCAL ESTIMATE AND
DRAFT ECONOMIC IMPACT ANALYSIS**

NR 110, Sewerage Syst.; NR 205, Gen'l Prov.; NR 208, Compl.Maint.; NR 210, Sewage Trtmt. Works
Revision and Creation of Rules on the
Operation and Maintenance of Sewage Collection Systems

PART I

Policy Problem Addressed by the Rule

The discharge of untreated sanitary sewage directly to surface waters creates several adverse water quality impacts, including a risk to human health, effects on fish and other aquatic life, and other aesthetically objectionable conditions. Pollutants in sanitary sewer overflows (SSOs) include solids, oxygen-demanding materials, toxic substances and nutrients. Bacteria, viruses and other microorganisms in sewage may transmit disease to people who ingest or are otherwise exposed to waters that contain large quantities of these organisms. Discharges of untreated sewage make waters unsafe for swimming and other recreational uses, contaminate drinking water when supplies are drawn from nearby surface waters and introduce pollutants to surface waters that deplete dissolved oxygen and add nutrients that cause increased algae and plant growth. Sewage also contains various solid materials that are aesthetically unpleasing. Building backups, while not defined as SSOs, are a hazard to the health of home and business owners and may impose significant costs for clean-up and replacement of personal property.

The number of SSO events in a given year is significantly dependent on rainfall and other climatic conditions during that year. For example, in 2008, a year that experienced several large and severe precipitation events, the total reported SSO volume discharged in the state was 1,181 million gallons. By contrast, in 2009, a relatively low precipitation year, there were only 82 million gallons discharged from SSOs. During 2010, the total SSO discharge volume was 364 million gallons. The total number of SSO events reported in 2008 was 574, in 2009 167 events were reported and in 2010 there were 398 events.

The purpose of these proposed rule additions and amendments is primarily to establish clear and unambiguous regulatory requirements associated with discharges of untreated or partially treated sewage. The proposed revisions will make Wisconsin's rules conform more closely to the U.S. Environmental Protection Agency's (U.S. EPA) interpretation of federal regulations, a long-standing point of concern by that agency. The proposed rule revisions were developed with the assistance and advice of an advisory committee of interested parties, including local government representatives, environmental interest groups, U.S. EPA, and others. A draft of this analysis was made publicly available and written and oral comments received. There were no requests received for additional coordination by local governments.

The rules establish provisions unique to sewage discharges and create consistency in the terminology and requirements applicable to publicly owned treatment works and privately owned facilities collecting and treating primarily sanitary sewage. The rules will allow sewage treatment facilities to employ efficient treatment practices when experiencing high wastewater flow, and most importantly, these rules require all owners of sewage collection systems (primarily municipalities) to create a capacity, management, operation and maintenance (CMOM) program which will assure those owners proactively maintain this important community infrastructure.

PART II

Summary of Rule's Economic and Fiscal Impact

Sewage collection system owners have a fiduciary responsibility to the citizens of their community to operate, maintain, repair, replace or otherwise manage these systems in the best interest of the community. Furthermore, robust and well-maintained sewage collections systems (and other infrastructure) are beneficial to the economic health of communities and attractive to new and existing businesses. Therefore, irrespective of these proposed rule changes, sewage collection system owners will

in the course of normal proper operations undertake actions to protect community infrastructure, prevent illegal SSOs or other system failures, eliminate building backups and minimize risks to human health and the environment. That being the case, any costs associated with the on-going operation and maintenance of a sewage collection system cannot be directly and solely attributed to these rule revisions. It is well-documented that the long-term benefits of maintaining public infrastructure significantly outweigh the short-term costs associated with those maintenance activities. Reducing the entry of infiltration and inflow of precipitation and runoff into sewage collection systems through implementation of a CMOM program will be less costly than responding to unplanned emergencies. Furthermore, the resulting reductions in wastewater volume means that ratepayers (including businesses) will not have to pay the increased costs for additional sewerage system capacity to deal with the excessive flow from leaking sewage collection systems.

Under current state and federal statutes and rules, SSOs are not permitted, with certain specific exceptions, and subject to enforcement action by the state or federal government. These enforcement actions usually are intended to require the offending permittee to fix any sewage collection system deficiencies that lead to the non-compliance. In some instances, monetary forfeitures may also apply, depending on the specific circumstances and the response to and outcome of the enforcement action. Establishing and implementing a CMOM program will reduce actual or potential SSO discharges and permit violations, thereby reducing the number of enforcement actions necessary. The existence of a CMOM program can significantly change the nature of the Department's enforcement response and reduce the short-term enforcement-related fiscal implications (e.g., monetary forfeitures), provided permittees are implementing activities to reduce or minimize the entry of excessive flow into their sewage collection systems as described in the CMOM program.

Building backups and damages caused to private property by such incidents and that may be caused by deficiencies in the sewage collection system create potential financial liability issues for the system owner. Implementing actions required by the rule will serve to reduce the number of building backups and any subsequent emergency activities for which the permittee may be responsible.

Therefore, the principal "new" cost associated with implementation of these proposed rules is the requirement that all owners of sewage collection systems develop or create a CMOM program. These are primarily municipalities, but also include a small number of private sewage collection systems. Under the proposed rule, creation a CMOM program requires the preparation of all documents and plans necessary to implement activities for the proper operation and maintenance of the sewage collection system. Many system owners already have in place preventative maintenance practices that essentially meet the principles of the CMOM program requirements established in the rules. The Department, U.S. EPA and other organizations have been actively promoting such a program among the regulated community for the past several years and the CMOM concept has received considerable support from system owners.

Many small communities, including those serving populations less than 10,000 to 15,000 and most satellite sewage collection systems, likely do not have the full capacity to develop a CMOM program without ~~assistane~~assistance, training and/or guidance from consulting professionals. The larger regional sewerage system owners should be able to provide assistance to the owners of connected satellite sewage collection systems, thereby reducing potential costs for CMOM preparation for those smaller satellite systems. Consultants and other businesses involved in sewage collection system work will realize monetary benefits from the services they provide assisting owners with CMOM development.

Statewide costs to develop CMOM programs for all sewage collection system owners is difficult to predict due to the variability in size of systems and the status of each individual community's current operation and maintenance program. In some instances, a permittee may have to start from scratch to develop a program in conformance with the rule's requirements. In other cases, permittees may simply have to "tweak" existing documentation to comply with the rule. In still others, CMOM programs are already in place (e.g., sewage collection systems owned and operated by municipalities within the

Milwaukee Metropolitan Sewerage District (MMSD), have developed CMOM programs under a court-established stipulation in 2005).

In a small informal survey of Wisconsin systems, it was reported that 11 of 18 respondents had a CMOM program in place.¹ Although the proposed rules require that all sewage collection system owners develop a CMOM program, the rules allow 3 years for developing the program and provide opportunities for flexibility such that individual communities can tailor the CMOM to their unique circumstances.

Based on information available, the estimated cost to develop a CMOM program for a small community that has minimal documentation of its preventative maintenance activities and has the ability to develop the program in-house could be as low as \$1,000. More likely, costs will range upward of \$5,000. If a consultant is involved to provide training or was contracted to actually prepare the CMOM documentation, the costs would be in the range of \$10,000 to \$15,000. CMOM program development for medium-sized communities is estimated to cost in the range of \$15,000 to \$20,000. Larger systems might expect costs proportionately greater. It should be noted that these costs are estimates only and should not be used for budgeting purposes. Careful, individual assessments of needs are important considerations in determining what the actual costs will be in each case.

Once the CMOM program is created, the permittee will likely have to collect and analyze sewage collection system data and undertake construction or other rehabilitation projects to implement the program. Irrespective of a CMOM program, these activities could be very costly, but are a necessary component to the effective and efficient management and proper operation of a sewage collection system and those costs cannot be directly attributed to the enactment of these rules. The City of Hayward recently developed a CMOM program and reported on its success as follows:

She [Diana Lewis, administrative assistant and lead operator] considers the time spent developing and sustaining the program well worthwhile. "This way, everything is very organized and put together," she says. "All the information is there in case there are questions from anyone who is new. It's good to keep a complete asset inventory so you know what you have. It's an easy way to have your maintenance schedule ready to go, so you can see where you're at and take a proactive approach, rather than wait until something breaks."

McCue [public works director] adds, "I think it's having a great impact on our performance. It's making sure we get out there and check everything regularly. If you have an issue with a certain party, say for example a sewer backup, you have the maintenance report to fall back on and say, 'yes, we did maintain that line – it was cleaned on this day.' It helps with your liability to have that kind of information.

"It's also helpful in case of an emergency like an overflow, to be able to go quickly to the GIS map, and pull up a manhole and say 'There it is. Here's the next one, the flow is in this direction, here's the pipe size.' With that information we can make sure we've got the right tools for the job before we get there.

"It's a lot easier to take care of everything when you have a plan and the information is all in one place."²

¹ Langhans, John, MSA Professional Services. "Collection System Cost Survey Results", presented at Northwoods Collection System Seminar-2011., Marshfield, WI, July 28, 2011

² Rulseh, Ted J., "Playing in the Big Leagues". Municipal Sewer and Water Magazine, COLE Publishing, Inc., 1720 Maple Lake Dam Rd., PO Box 220, Three Lakes, WI 54562-0220. July 2011

Because existing rules and permits contain reporting requirements similar to those specified in this proposed rule, there should be no or minimal additional cost associated with this activity. If a system owner, under the Compliance Maintenance Annual Reporting (NR 208) rule, identifies more than 4 SSO events (as defined in the rule) in any given year, a “failing grade” for this section of the report will be noted in the reporting system. Some owners have indicated that adverse publicity and potential lawsuits by third parties could result in significant costs, even though the sewage collection system is operating within all design parameters.

Businesses may experience indirect costs associated with collection system improvements by municipalities through their user fees and other local taxing authorities for sewage collection system maintenance and improvements. It is difficult to determine the statewide or individual system effect of small business due to the variability in requirements that may occur in each municipality.

The effect of this rule on businesses will primarily be indirectly through the actions of municipal sewage collection system owners. Costs for sewage collection system maintenance and improvements are normally assessed to all users of the system, including businesses, residential users and commercial entities. Such costs are determined at the local level. In some instances, it may be determined that excessive quantities of infiltration and inflow originate from a building sewer on private property. If the building sewer is identified as a source of excessive uncontaminated flow, the municipality may require rehabilitation or replacement of the building sewer by the property owner. Bringing privately-owned infrastructure into compliance with plumbing codes, disconnecting foundation drains or repairing leaks in building sewers could cost from \$5,000 to \$20,000 for small commercial buildings, but would be larger for larger buildings.

In the case of private ownership of a sewerage system (e.g., a mobile home park) identified as a source of SSO, replacement or repair of sewerage system components will continue to be the responsibility of the owner. The number of these cases is likely to be very limited because of the small number of private system permittees. The rule does not specifically mandate that improvements be made to sewage collection systems. However, if SSOs continue and permittee does not take action to resolve the noncompliance, the Department could incorporate specific requirements in a permit or enforcement action could be pursued.

The City of Superior believes the proposed rule will impose significant additional costs due to the current unique configuration of their combined sewer system. They have estimated “...a conservative expenditure of 20 million dollars...will result in a 40% increase to the residential user volume discharge.”³

The additional costs to the Department resulting from these rule revisions will be minimal. Minor revisions to permit documents will be necessary and can be easily incorporated into the permit data management system. The rules do not require specific, routine review and approval of CMOM documents, but staff will, if necessary, review CMOM program activities as part of ongoing evaluations of permit compliance. Although considerable effort has already been devoted to training on CMOM program development through grant monies provided by U.S. EPA, some additional training of municipal officials and consultants will likely be needed. Because the rules create greater clarity and consistency in what is required, the Department should find it less time consuming and less controversial when making determinations of compliance or noncompliance with permit conditions prohibiting SSOs, thereby reducing the staff time necessary in analyzing events associated with noncompliance.

³ It is the Department’s intent that the combined sewer system for the City of Superior would be regulated under the proposed rule provision regarding combined sewer systems and that the changes to that system as identified by the City will not be necessary. Changes to the proposed rule may be needed to clarify this issue and avoid any future misunderstandings.

PART III**Benefits of Implementing the Rule and Alternatives to Implementing the Rule**

An initial benefit of these proposed rule revisions is to establish clear and consistent regulatory requirements associated with discharges of untreated or partially treated sewage. Although current state and federal laws and regulations are intended to prohibit the discharge of sanitary sewage without treatment and have been adopted to minimize public health risks, the current rules lack clarity and consistency, thereby causing uncertainty in their implementation on the part of the Department, the regulated community and U.S. EPA. The proposed rules establish provisions unique to sewage discharges and create consistency in the terminology and requirements applicable to publicly owned treatment works and privately owned facilities collecting and treating primarily sanitary sewage.

Most importantly, these proposed rules require that all permittees have a CMOM program in place within 3 years of rule promulgation. The purpose of the CMOM program is to assure sewage collection system owners proactively maintain this important community infrastructure. Sewage collection systems are an important and expensive municipal asset. It is important these systems be constructed, operated and proactively maintained to assure that this essential infrastructure investment does not deteriorate. While the proposed rules require that WPDES permits issued by the Department prohibit the discharge of untreated or partially treated sewage, they also recognize and require “common sense” activities that permittees should use to protect the large monetary investment they have in their sewage collection systems and will reduce both costs and emissions from reductions in energy usage for pumps, chemical purchases and wear and tear on equipment. The CMOM program is a proactive approach to assuring the long term integrity of these systems rather than having this provision incorporated into an enforcement action after a permit violation. This requirement will create a level playing field for all sewage collection system owners in the state.

The Department believes that well-maintained and operated sewage collection and treatment systems are important to both the short-term and long-term economic viability and competitive attractiveness of the state and its many local communities. Stabilization of property values and increases in the desirability of neighborhoods will also be realized when CMOM program implementation reduces the risk of basement backups. Over time, permittees will realize cost savings in the operation and maintenance of their sewerage systems.

The proposed rule also establishes a provision whereby the Department may allow an operational practice called “blending” when wastewater volume entering the sewage treatment facility is greater than the design capacity of the facility. This practice, which allows a treatment facility to, subject to specific regulatory restrictions, reroute part of the flow around the biological treatment process, is not currently addressed in either state or federal regulation. This will save permittees costs associated with construction of additional treatment capacity to account for these infrequent high wastewater flows.

Lastly, these proposed rules will allow the Department to more fairly and judiciously apply enforcement discretion for non-compliance with statutory requirements restricting the discharge of untreated sewage to surface waters. The Department will be able to more deliberately take enforcement action for violations of the SSO prohibition and take into account the individual circumstances associated with each event. While it will be necessary to force action in some instances through aggressive enforcement responses, the intent of these rules will improve the overall management of our sewerage system infrastructure. The rules will allow sewage collection system owners to direct their limited resources toward prevention, rather than responding to emergencies or enforcement actions.

Two alternatives to promulgation of these rule revisions are to retain the current rule language or remove all language in current rules dealing with the subject of untreated sanitary sewer overflows. As noted, the uncertainty and ambiguity of the current rules is unacceptable. The regulated community has expressly asked the Department to modify the rules from the current situation. Deleting the requirement to prohibit sanitary sewer overflows would be unacceptable to U.S. EPA and would not conform to the requirements

of the Clean Water Act. The Department does not believe eliminating control over the discharge of untreated sewage is in the public interest.

PART IV

Long Range Implications of Implementing the Rule

One of the most significant implications of implementing the provisions of this rule is the long range benefit sewage collection system owners will experience. Sewage collection systems are very important components of any community's infrastructure and assets. Failure to properly manage, operate and maintain these systems will lead to premature deterioration of the pipes and other parts of the system creating the need for expensive and extensive repair and replacement. The rules are intended to promote the development and use of tools that sewage collection system owners can employ to prevent the intrusion of excessive clear water into the sewage collection system. Implementation of a CMOM program as established by these rules will increase the service life of sewage collection systems and, in the long-term, mitigate the potentially more costly effects of sewage collection system failures later. This will reduce the overall costs to the public of providing wastewater collection and treatment.

In addition, the State of Wisconsin and the federal government have provided significant funding contributions to the building of sewage collection and treatment systems in the state. For example, as of June 30, 2010, Wisconsin's Clean Water Fund (enacted in 1987 Act 399) has invested \$3.3 billion for the construction of these systems. The implementation of the requirements established by these proposed rules will protect this huge investment the state has helped build. Communities that received support from these funds are required to establish specific budgets for maintenance and replacement of these facilities and, therefore, should have sufficient resources to support the long-term viability of these systems.

PART V

Comparison with Approaches Used by Federal Government

There are no federal regulations that correspond to ch. NR 110. The revisions to ch. NR 205 will make Wisconsin's rules more compatible with current U.S. EPA regulations. Current NR 205 language applicable to "bypassing" is contained in a section of the rule that applies only to publicly owned treatment works and, therefore, does not apply to bypasses at industrial waste treatment facilities. Federal rules do not distinguish between publicly owned treatment works and industrial facilities. One amendment to NR 205 addresses this issue.

Until recently, U.S. EPA has relied upon the bypassing language of 40 CFR 122.41(m) as the primary basis for control over SSOs. More recently, U.S. EPA has suggested through various enforcement actions against a few collection system owners in Wisconsin that the "bypass" provisions are not applicable to SSOs, but solely apply only to overflows within the treatment facility and SSOs are prohibited without exception or without condition. Nationally, U.S. EPA has established CSOs and SSOs as enforcement priorities for that agency and U.S. EPA (Region 5) has focused enforcement action in the state primarily on SSO events reported by Wisconsin permittees.

Given these circumstances, current federal regulations are ambiguous concerning their application to SSO discharges. Inconsistency in U.S. EPA's interpretation of their regulations has created uncertainty in expectations. Therefore, revisions to ch. NR 210 will create greater specificity with respect to provisions governing SSO discharges. Other changes to NR 205 also make this rule more compatible with U.S. EPA regulations concerning bypasses within treatment facilities that are necessary for purposes of essential maintenance and operation as well as addressing some discrepancies associated with anticipated or scheduled bypasses.

There is no federal regulation mandating establishment and implementation of CMOM programs. U.S. EPA has incorporated CMOM requirements into many enforcement actions across the country.

Over the past decade, the practice of diverting sewage around biological treatment units at sewage treatment facilities under specific conditions and recombining or “blending” this diverted wastewater with fully treated effluent has been subject to several U.S. EPA proposals. This practice, when implemented, is typically used as an alternative to bypassing untreated wastewater. Among others, MMSD employs blending and has requested that the Department establish a regulatory framework for this practice. None of the proposals for allowing blending have been finalized and U.S. EPA’s application of the federal “bypass prohibition” rule to blending has been sporadic and inconsistent creating great uncertainty about the acceptability of this practice.

U.S. EPA is currently evaluating stakeholder input concerning SSOs and related topics and many of those topics have been incorporated into this rulemaking proposal. The Department believes the proposed rule revisions address the issues raised by many interested parties and U.S. EPA and may serve as a model for federal regulatory changes.

PART VI

Comparison with Approaches Being Used by Neighboring States

All the other U.S. EPA Region 5 states (Illinois, Indiana, Michigan, Minnesota and Ohio) and the state of Iowa regulate SSOs through law, regulation or guidance in a manner similar to past interpretation of U.S. EPA’s bypass regulation. The general bypassing prohibition language and reporting requirements in these state regulations are similar to current WDNR rules and permits. Most states, over the past several years have implemented enhancements to the reporting requirements and tracking (including making such information available to the public) of SSO releases. None of the states have rules relating to blending, though it is apparent from reviewing information available that this practice is not unusual at some sewage treatment facilities. A brief summary of current state activities relating to SSOs follows:

ILLINOIS

The Illinois Environmental Protection Agency (IEPA) is in the process of developing a clearer strategy concerning SSOs because of apparent misunderstanding or misinterpretation of some aspects of current permit or regulatory requirements. SSOs are prohibited under Illinois regulations similar to the U.S. EPA bypass provisions and the reporting requirements in permits include the 24 hour verbal and 5 day written reporting provisions. The Agency believes there has been underreporting of events in the past, but this has improved in recent years. Agency responses to reported SSO events are handled on a case-by-case basis. SSOs associated with extraordinary or extreme precipitation events generally receive less enforcement attention than those which occur during moderate events. The state has the ability to restrict sewer construction if SSO events reveal a capacity issue during moderate precipitation events. In response to noncompliance, IEPA has included CMOM-like requirements in the enforcement actions, but there is no state-wide CMOM requirement in regulations. Permits are not issued to satellite sewage collection systems, though some permittees operating wastewater treatment plants exercise oversight of satellites.

INDIANA

The Indiana Department of Environmental Management (IDEM) has rules similar to the federal bypass regulation and treat SSOs as a prohibited discharge. There are no other rules concerning SSOs and IDEM relies on enforcement of the prohibition in implementing the program. SSO reporting has been inconsistent and non-reporting is considered a significant permit violation. In evaluating non-compliance, IDEM generally will pursue enforcement if there are greater than about 10 SSO events per year, though this is a case-by-case determination. Some events are disregarded if there is a significant flooding event associated with the SSO. CMOM requirements have been incorporated into enforcement actions where appropriate. The state does not issue permits to satellite sewage collection systems.

IOWA

The Iowa Department of Natural Resources (IDNR) updated rules regarding bypasses and SSOs in 2009. The IDNR rules specifically include SSO within the definition of a bypass, an expansion on the U.S. EPA definition. All other provisions, including the “exceptions” stated in the federal bypass rule are the same. One difference from the U.S. EPA regulation in Iowa is the specific provision that IDNR cannot assess a civil penalty if the noted “exceptions” are met. IDNR requires verbal notification of the agency by the permittee when a SSO occurs within 12 hours (instead of 24-hour notice), but a written report is required to be submitted with the monthly discharge monitoring reports instead of the 5-day notification. The agency rules allow the agency to order, on a case-by-case basis, public notice, require monitoring and cleanup of discharges and temporary disinfection. Permits are not issued to satellite sewage collection systems.

MICHIGAN

The Michigan Department of Natural Resources and Environment (MDNRE) has developed the most complete and direct strategy for addressing SSOs, including a more aggressive enforcement position. However, the regulations under which MDNRE operates are similar to the federal rule. MDNRE uses a 25-year, 24-hour storm as the starting point when considering whether the permittee must develop a “corrective action plan” under an enforcement action for noncompliance with the bypass prohibition. Corrective action plan requirements (some of which contain CMOM-type requirements) are flexible and established on a case-by-case basis in consideration of factors including costs and economic impacts on the community. State law in Michigan contains specific reporting and notification requirements for SSO discharges, including notification of local health departments, the general public and downstream municipalities. Sampling of releases is required unless the local health authority waives this requirement. Permits are not issued for satellite sewage collection systems.

MINNESOTA

Regulations governing SSOs implemented by the Minnesota Pollution Control Agency (MPCA) are similar to the bypass requirements in U.S. EPA regulations. In addition, within the body of Minnesota rules, there are general prohibitions on discharge of sanitary sewage to state waters. Reporting requirements for permittees are similar to federal requirements. MPCA enforcement actions for noncompliance are based on water quality standards violations, a determination of whether the discharge was preventable or non-preventable and the design of the sewage collection system as compared to the storm event that may have caused the SSO to occur. CMOM requirements may be incorporated into consent decrees in response to noncompliance where U.S. EPA is involved in the enforcement action. Satellite sewage collection systems are not subject to MPCA permitting.

OHIO

The Ohio Environmental Protection Agency (OEPA) rules for SSO discharges are also similar to the U.S. EPA bypassing regulation. The agency considers any such discharges as illegal under these rules. Significant emphasis in recent years has been on enhancing permit requirements for reporting SSOs and assuring reports are submitted. Monthly reporting of SSOs are required with the monthly discharge monitoring reports and this information is used to identify permits where enforcement may be appropriate. In some instance permits contain specific requirements related to SSO issues within a permittees sewage collection system, including inclusion of provisions to implement CMOM-type requirements. Permits for satellite collection systems are not issued in Ohio.

An investigation into wet weather issues sponsored by the state of Michigan and conducted by the Center for Sustainable Systems at the University of Michigan was published in December 2009⁴. On the topic of SSOs, the study presents the results of a survey in which 34 agencies (U.S. EPA Regions, states) responded. The results are summarized in the report as follows:

⁴ Center for Sustainable Systems, School of Natural Resources and Environment, University of Michigan. “Wet Weather Benchmarking Report” December 11, 2009

9% of respondents (3 agencies) stated that their agency issues permits allowing SSOs. 42% of the respondents (14 agencies) exercise enforcement discretion for SSOs above a set size or level. Of the 31 agencies with SSOs, only 9% (3 agencies) do not require SSOs to be eliminated. Only 37% of the respondents (11 of 30 agencies) have established standards for identifying excessive inflow and infiltration (I/I). 32% of respondents (10 of 31 agencies) allow blending of treated wastewater with a mixture of storm water and untreated sewage in one or more of their wastewater treatment plant permits.

Clearly, there is a large variability in how the states across the country regulate SSO discharges and, more specifically, how enforcement of the “prohibition” included in most state regulations and permits is enforced. One of the purposes of the proposed changes to Wisconsin rules is to eliminate the uncertainty and inconsistency associated with these events.