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March 14, 2017

VIA DOCKET UPLOAD (www.regulations.gov)

U.S. Environmental Protection Agency
EPA Docket Center
Docket ID No. EPA-HQ-OW-2016-0376
Mail Code 28221T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket EPA-HQ-OW-2016-0376, Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin

To Whom It May Concern:

The Association of Ohio Metropolitan Wastewater Agencies (“AOMWA”) appreciates the opportunity to comment on U.S. EPA’s proposed rule for public notification requirements for combined sewer overflows (“CSOs”) to the Great Lakes Basin. AOMWA is a not-for-profit trade association that represents the interests of publicly operated treatment works (“POTWs”) across the State of Ohio, serving more than 4 million Ohioans and successfully treating more than 300 billion gallons of wastewater each year. AOMWA members include Akron, Avon Lake, Butler County, Canton, City of Hamilton, Columbus, Dayton, City of Fairfield, Hamilton County, Lancaster, Lima, Marysville, Metropolitan Sewer District of Greater Cincinnati, Middletown, Newark, Northeast Ohio Regional Sewer District (“NEORS”), Portsmouth, Springfield and Warren.

The fundamental purpose of our organization and its members is to protect the water resources on which Ohio’s communities depend. Indeed, our agencies are the front line of protection for the State’s water resources and significant water quality improvements have been made as a result of our members’ efforts to address the effects of CSOs over the last several decades. Several of our members discharge into Lake Erie or its tributaries and will be directly impacted by the proposed rule in its current form. Moreover, POTWs across Ohio, including our other members, have a keen interest in this rulemaking as it is likely to influence CSO notification requirements imposed on dischargers outside of the Great Lakes System.

As such, AOMWA supports and incorporates as if fully rewritten herein the comments submitted by its members, City of Akron and NEORS. We also support and endorse the comments offered by the National Association of Clean Water Agencies (“NACWA”).

One common theme in the comments submitted on this proposed rulemaking that we believe merits further attention is that the proposed rule in its current form is far stricter than what is required by applicable law—Section 425 of the Consolidated Appropriations Act of 2016 (“Section 425”). As NACWA has noted in its comment letter, Congress intended Section 425 to provide flexibility in notification requirements, and provided EPA with leeway in determining how utilities provide public notification of CSOs. The flexibility provided for by Section 425 is both needed and entirely appropriate given the wide variation between communities affected by the proposed rulemaking in terms of the nature and extent of CSOs, the potential impact of such CSOs and available staffing and financial resources for implementing these requirements. However, the proposed rule unreasonably restricts the flexibility provided for by Section 425 in several respects.

Therefore, AOMWA encourages EPA to reconsider those aspects of its proposed rulemaking that go beyond what is required by Section 425 so as to retain the flexibility called for by Congress. The following are a few examples of requirements which go beyond what Section 425 requires and should be reconsidered:

- *Expanded Application to CSO Discharges to the Great Lakes Basin.* Section 425 only requires EPA to regulate dischargers to the Great Lakes, which is defined by statute to not include tributaries. 33 U.S.C. § 1268(a)(3)(B)-(C). However, in its current form, the rule imposes requirements for CSO discharges to a larger group of waters, including streams, rivers, lakes, and other bodies of water within the Great Lakes Basin. Many of the CSOs covered by this expanded rule are far removed from the Great Lakes and unlikely to have immediate impacts on Great Lakes recreation activities. This expansion also threatens to improperly usurp State permitting authority and set aside appropriate public notification procedures that are already in place for CSO permittees that discharge to waters in the Great Lakes Basin other than the Great Lakes. The proposed CSO notification rule requirements should not be expanded beyond direct CSO discharges to the Great Lakes.
- *Immediate Notification.* The requirement to provide notice that a CSO discharge has occurred within four hours of “becoming aware” of the discharge is too short and vague. Such notification would be overly burdensome and require additional staffing. Not all of AOMWA’s members are staffed 24 hours a day / seven days a week, nor does Section 425 require that they have around-the-clock staff dedicated to determining when a CSO has occurred.
- *24-Hour Supplement Notification.* Similarly, the proposed rule also seeks to impose a 24-hour supplemental notice requirement for estimated volumes and approximate end times of CSO discharges. Again, this proposed 24-hour timeframe is nowhere to be found in Section 425. It takes time to validate this data and the general public is unlikely to understand the meaning of estimated volumes and/or end times. In fact, providing estimated CSO end times may cause the public to incorrectly assume that an impacted public access area is safe for recreation. Utilities should be given adequate time to gather and validate such data so that the intent of this requirement—to provide the public improved information regarding CSOs in the Great Lakes—can be met.
- *Duplicative Annual Reporting Requirements.* The proposed rules also include annual reporting requirements that would force POTWs to allocate resources to re-create information that is already publicly available and submitted to state regulators

as part of utilities' permitting requirements. In contrast, Section 425 requires only publication of "each treatment works from which the Administrator or each affected State receive a follow-up notice."

Accordingly, AOMWA urges U.S. EPA to revisit these and other requirements in the proposed rule that go above and beyond what is required by Section 425. We are deeply concerned that these stringent across-the-board requirements will overburden utilities' already-limited budgets, a problem which is masked by U.S. EPA's inaccurate cost estimates. U.S. EPA's estimated average incremental cost per CSO permittee of \$2,000 per year **severely** underestimates the financial burden that will be imposed on utilities by this rulemaking. In reality, compliance costs associated with the rule as proposed (for additional staffing, real-time monitoring, hiring consultants, etc.) are likely to be hundreds of thousands of dollars if not more.

Again, we stress the importance of maintaining and further developing flexibility in the proposed rule. While AOMWA supports the flexibility that U.S. EPA has built into the rule (allowing monitoring or modeling to determine the occurrence of CSOs and to estimate volumes or duration; permitting different electronic media for required notices; etc.), more is needed to maximize the options available to utilities tasked with meeting these requirements. AOMWA encourages U.S. EPA to take advantage of the flexibility provided for by Section 425 to develop a proposed CSO notification rule that recognizes the diverse group of utilities affected by this rulemaking and the dynamic and unpredictable nature of CSO occurrences.

Thank you for your consideration of our comments and those submitted by Akron, NEORS and NACWA. Should you have any questions or wish to discuss this rulemaking further with our organization, please contact Andrew Etter at (614) 365-2765.

Sincerely,



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cc: (all via e-mail)
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