



MAMWA Comments on EPA Peak Flow Management Notice November 2018

On October 31, 2018, MAMWA submitted comments in response to EPA's August 31, 2018 *Federal Register* Notice proposing possible amendments to the National Pollutant Discharge Elimination System (NPDES) regulations relating to peak wet weather flow management (blending) at wastewater treatment plants with separate sanitary system collection systems.

MAMWA made a number of general comments and then responded to the specific questions EPA raised in the *Federal Register*. MAMWA supported a flexible approach that recognizes the benefits of blending (for example, as an option to address climate change impacts) and EPA's role (consistent with the 8th Circuit *Iowa Cities* decision, EPA can only regulate end-of-pipe discharge quality). MAMWA also noted that peak flow management:

Maximizes Treatment Capacity and Performance – POTWs should not be limited in capacity to the individual treatment unit that can process the least amount of sewage. Public utilities should be able to maximize the treatment provided to peak flows.

Provides Significant Pollutant Reductions and Enables Other Environmental Investments – Public savings from smart use of infrastructure can be applied to other high priority community environmental investments. Many plants across the nation have worked diligently over decades to maximize treatment by routing a portion of flows around internal treatment plant bottlenecks during wet weather events. These facilities have done so while maintaining full compliance with all permit requirements.

Is Not A Bypass – Managing peak wet weather flows around bottlenecks is an effective engineering practice and is not a bypass when the diversion is consistent with the designed operation of the plant, protects the biological treatment processes, and is designed to meet all permit requirements.

Must Meet All Permit Requirements to Protect Water Quality – Any peak wet weather flow management approach must ensure that applicable permit requirements will be met at the final discharge location.



Must be Done In Accordance with an Agency-Approved Peak Flow Management Plan – Agency approved peak flow management plans will identify how the POTW will (1) prepare for wet weather, (2) maximize flows through available treatment units (primary, secondary, and tertiary – if applicable) and the flow thresholds when flow diversions around any treatment units will be triggered, and (3) return to normal treatment following the peak flow event.

Will Generate Billions in Regulatory Savings that Can Offset Regulatory Burdens – A flexible peak flow management rule will resolve perceived regulatory obstacles regarding in-plant peak flow management and, accordingly, generate billions nationwide in avoided regulatory costs for publicly-owned sewage treatment plants. Those regulatory savings would be available to offset the regulatory burdens from new or more stringent EPA regulations.

Should Not Trigger the EO 13771 “2-for-1” Provision – Because the rule will reduce regulatory burdens, it should not trigger the “2-for-1” provision in EO 13771. To the extent the “2-for-1” policy is triggered despite the regulatory savings, EPA should pursue a waiver from EO 13771.

MAMWA also commented that any EPA rule should not apply in the 8th circuit pursuant to the *Iowa Cities* decision and that, as a part of any rule, EPA should withdraw the BOD/TSS minimum percent removal requirements from the secondary treatment rule. Percent removal is a completely unnecessary, ineffective, and inappropriate regulatory burden.

MAMWA’s response to EPA’s specific questions echoed the general comments above.

In response to a question asking for successful strategies for reducing peak flow volumes at a treatment plant, MAMWA explained that communities have implemented a wide range of approaches to address peak flows in their sewage collection systems based on individual sewer system and environmental factors. MAMWA highlighted the fact that often flow diversion at the treatment plant is the most cost-effective way to manage peak flows that can be delivered to the treatment plant, especially during extreme flow events.

EPA next asked what permitting or other regulatory approaches would “provide a good basis for any rulemaking in this area.” MAMWA referenced the fact that NPDES permits across the country have incorporated agency-approved peak flow management protocol, appropriate monitoring, and reporting. MAMWA also mentioned tertiary treatment such as facilities installed for nutrient control. Few, if any, of those facilities are sized to handle



peak wet weather flows. Permit decisions about the sizing of those facilities and operational protocols provide another source of existing, effective regulation of flow diversions - consistent with meeting all discharge permit requirements.

EPA's third question was "What treatment technologies have POTWs with separate sanitary sewer systems used successfully to manage peak excess flows during wet weather? How effective are these technologies at meeting effluent limitations? What are examples of technologies addressing other pollutants not typically subject to discharge requirements in NPDES permits (*e.g.*, pathogens)? Related to these questions, do you have supporting treatment efficacy data that you would be willing to share with EPA for this rulemaking?" MAMWA responded that the NPDES permitting approach is an ideal tool for addressing peak flow management, and that decades of data are available regarding the performance of these systems.

Lastly, EPA asked "What are your specific suggestions regarding conditions that could be included in NPDES permits to allow diversions of some peak flows around biological treatment units to protect the treatment plant?" Considerations could include:

(1) What information might the NPDES permitting authority need in order to determine whether such diversions are necessary to protect the treatment plant?

MAMWA disagreed that peak wet weather flow management is limited to protecting biological treatment units or "the plant." Blending is appropriate whenever such management (1) meets all discharge permit requirements and (2) is more cost-effective than removing or storing the peak wet weather flows.

(2) Should the number of times such diversions are permitted to occur be limited or reported?

MAMWA argued that the number of diversions should not be limited other than as may be necessary to ensure proper operation and maintenance of the treatment plant.

(3) Are there any requirements that should be considered for ensuring that the treatment plant is operated and maintained in an effective manner to minimize the number of peak flow diversions that occur?



MAMWA disagreed that there is a need to limit peak flow diversions, and suggested that EPA should focus on ensuring treatment plant discharges meet permit requirements. How that is best done should be left to the treatment plant managers.

(4) What requirements would be appropriate for ensuring that maintenance of the collection system to minimize the introduction of stormwater into the sanitary system through inflow and infiltration is occurring?

MAMWA commented that EPA should not seek to regulate inflow and infiltration (I/I) issues as part of a POTW peak flow management rule. Instead, excessive I/I issues should be addressed through EPA's CMOM, Nine Minimum Controls, and enforcement programs focusing on unpermitted sanitary sewer overflows.

(5) What monitoring and reporting requirements would be important to demonstrate that applicable effluent limits are still being met?

MAMWA noted existing monitoring requirements that are in place for numerous POTWs nationwide that have wet weather diversions. Results demonstrate a long-term record of consistent permit compliance. EPA has online access to data from dozens of plants regarding their peak flow treatment performance.

(6) How may the permit ensure that public and ecological health is protected?

MAMWA explained that NPDES permits for existing peak flow diversion facilities already do this and have done so – without controversy – for decades.