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December 21, 2015

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, DC 20460

Dear Administrator McCarthy:

On behalf of the Local Government Advisory Committee, we are writing to provide our recommendations concerning proposed revisions to EPA's regulations of Municipal Separate Storm water Sewer System (MS4) Phase II remand¹. Due to the fact that this affects a wide variety of counties and municipalities across the nation, the LGAC is writing to put forward our recommendations on EPA proposed permitting revision options for small MS4s.

Background: The rule-making specifically proposed by the EPA addresses procedural requirements for general permits for small municipal separate sewer systems. The proposed revisions will effectively address about 6, 700 small MS4s nationwide. Large urban areas are well-equipped to handle this type of MS4 construction and maintenance, and likely have more resources for minimum permit requirements of any kind. However, small communities may not only lack the resources for "one size fits all" permit requirements, but also the work force to address permitting in the first place.

Finding: The LGAC believes that clarification on the MS4 permitting process will be beneficial. The LGAC also further acknowledges that the "States Choice" (*Option 3*) of the remand will bring added security and flexibility to the permitting process. Expansion of the permitting process to the public forum provides opportunity for input and innovation in a municipality's storm water sewer system and pollutant discharge reduction.

¹ The U.S. Court of Appeals for the Ninth Circuit (*Environmental Defense Center vs. U.S. Environmental Protection Agency*, 344 F.3d 832 (9th Cir. 2003)) ("*EDC v. EPA*")

Finding: Each permit would be required to establish requirements that reduce the discharges to the MEP, protect water quality, and satisfy the water quality requirements of the CWA – the permitting authority could achieve this exclusively through the permit (*Option 1*), by adopting a procedural mechanism to approve of individual MS4 programs (*Option 2*), or by using a hybrid of the two. This option would enable the permitting authority to choose which option is best suited for them. Through the hybrid approach the State could develop one permit using the Option 1 approach, and establish a second permit that relies on the Option 2 approach. A permit could establish some minimum requirements that meet the regulatory standard (Option 1), but then choose to rely on the MS4 to propose some MEP-type requirements, which would then be subject to review/approval and public comment (*Option 2*).

Recommendation: The LGAC recommends that the EPA strongly consider the EPA proposed Option 3, (*the State Choice*) which maximizes the flexibility for local governments.

Recommendation: The LGAC recommends that the Option 3 be utilized to give full opportunity for the public to comment and give input on what is the Maximum Extent Practicable [MEP] for pollutant discharge reduction.

Recommendation: The LGAC strongly recommends that financial and technical resources be made available for small communities through the State Revolving Fund or through grant mechanisms to address the MS4 permitting.

Recommendation: The LGAC strongly believes that Integrated Planning offers planning guidelines to coordinate regulatory obligations for the best cost effective means. Therefore, the LGAC recommends that the EPA explore ways for the MS4 Option be considered within a Framework for Integrated Planning.

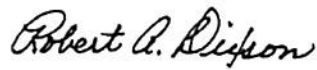
Recommendation: The LGAC believes that treated and managed stormwater can provide sources of water for re-use. Therefore, the LGAC strongly recommends that full flexibility be given in whatever Option that goes forward to provide water re-use options for communities, especially in drought areas and in arid watersheds.

In Summary: Clean and safe water is important to us at all levels of government at the state, tribal and local level. Additionally, public and community input offers more opportunity to achieve water quality objectives across all watersheds-whether small or large. The LGAC believes Option 3 allows us at the local level more flexibility to achieve the goal of clean and safe water. Also, Option 3 gives more opportunity for input from our local citizens. This ultimately helps to establish a realistic and achievable benchmark with minimums set by the individual states in the permitting process and is the best way to go for all levels of government.

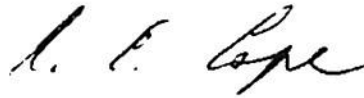
Furthermore, the LGAC recommends that EJ, rural and small communities be provided with opportunities to have assistance afforded to them to fully implement and comply with the new requirements as proposed in the MS4 final rule. Small, rural and EJ communities often lack the administrative capabilities to identify funding sources, to manage loans and grants, and to comply with reporting and monitoring requirements. They need assistance in building this capacity, which can lead to greater compliance and greater human and environmental health for these communities.

The LGAC commends you, Administrator McCarthy, on your continued efforts to include the voice of local leaders in shaping the role each part of government plays in achieving better public health and clean water for all. And we appreciate this opportunity to give feedback on the EPA proposed rule-making revisions for MS4 small systems, we also appreciate the outreach the EPA is has done and is doing to local governments, especially small and disadvantaged communities.

Sincerely,



Mayor Bob Dixon
Chairman



Commissioner Robert Cope
Chairman, Small Community Advisory
Subcommittee (SCAS)



Ms. Susan Hann
Chairwoman, Protecting America's
Waters Workgroup

