

**January 31, 2011**

The Honorable Lisa Jackson  
Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

The Honorable Pete Silva  
Assistant Administrator for Water  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

**Re: Executive Order 13132  
Input on Federal Stormwater Rulemaking**

Dear Administrator Jackson:

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) is pleased to provide the following input under Executive Order (EO) 13132 on *Federalism* consultations to the Environmental Protection Agency (EPA or Agency) regarding the upcoming Clean Water Act (CWA) stormwater rulemaking. Celebrating its 50<sup>th</sup> Anniversary this year, ASIWPCA is the national voice of state, interstate, and territorial officials responsible for implementation of programs that protect surface waters across the nation – including the stormwater program. We appreciate the opportunity to provide perspectives of the state and interstate regulators (collectively referred to in these comments as states) to the Agency while you are in the early stages of rulemaking.

The states support modification and refinement of the federal stormwater program to improve its effectiveness. Meaningful water quality improvement can be achieved with greater control of stormwater runoff from its many sources. The important water quality gains that can be achieved through improved stormwater control will require meaningful state resources to permit, inspect, monitor, and enforce new requirements, and to coordinate with nonpoint sectors. EPA must work with states as full partners in this rulemaking process so that modifications to the stormwater program yield the greatest environmental and water quality benefits for the corresponding financial and human capital investment. EPA must also make every effort to work with the states, across the

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Executive Director & General Counsel,  
**Alexandra Dapolito Dunn**

federal government, and with other stakeholders to reduce stormwater pollution from sources not covered by the CWA's permitting program.

States feel strongly about the stormwater program, and in particular, recommend the EPA spend even more time speaking with states about their experiences managing stormwater in different climates and regions across the nation. This letter represents our initial effort to identify and advance to EPA suggested improvements and enhancements for the stormwater program, within the time period requested by the Agency under the EO. **Due to the importance of state perspectives on the national stormwater program's reform, and the value of state experience in the field managing stormwater, ASIWPCA calls on EPA to hold robust and focused national and regional outreach session efforts to gather additional state input, which will be critical to the success of this effort.**

### **Executive Summary**

Stormwater runoff, precipitation washing over the landscape, remains a leading source of water quality impairment nationwide. States support EPA's desire to improve and enhance stormwater program capacity. However, the time has come for EPA to seriously consider regulating precipitation-driven discharges in a fundamentally different way than traditional, end of pipe, process wastewater point source discharges. EPA also must design a program which balances the need for some national consistency with essential state flexibility to manage stormwater in the most effective way possible. ASIWPCA provides the following summary of recommendations:

- EPA must engage the states in a meaningful consultation process to incorporate their on-the-ground experiences in regulating precipitation-driven discharges.
- EPA needs to separate the §402 program into two categories: precipitation-driven discharges and traditional process wastewater, end of pipe discharges. This will allow new and current regulations for stormwater to be clear and appropriate through stormwater-specific language.
- Precipitation-driven discharge regulations within NPDES should recognize BMPs, where selected as the most appropriate and protective control by the permitting authority, and designed, installed, and maintained to specified standards, as fully meeting permit requirements.
- EPA must allow prioritization and risk-based evaluation of precipitation-driven discharges, given the wide spectrum of sources, challenging logistics, and significant costs associated with stormwater treatment and retrofits.
- EPA must lead a federal agency effort to develop a stormwater strategy for lands in production, which generally fall outside the NPDES program.

- EPA must work with the U.S. Department of Agriculture, and call upon Congress, to ensure that the next Farm Bill directs funds to impaired waters and builds programs to reduce stormwater from agricultural activities.
- New development requirements must distinguish between a “goal” of natural hydrology and an enforceable “performance standard” which is constrained by feasibility, practicability, and the present landscape.
- Redevelopment performance standards must protect threatened waters and promote restoration of impaired waters, but not incentivize urban sprawl.
- The Retrofit Program and Chesapeake Bay specific requirements both should be proposed in separate rulemakings.
- EPA must call upon Congress to significantly increase federal funding (e.g., §106, §319) for states to implement the stormwater program’s new features.

## **I. Background**

Regulating stormwater runoff is a complex challenge for state and local water quality programs. Pollution carried by precipitation continues to be a leading contributor to watershed impairments nationwide. In addition to carrying chemical and/or bacterial contaminants, stormwater poses a physical hazard to aquatic habitats and stream function by changing flow velocity and volume. Urbanization and rural development changes the physical, chemical, and biological conditions of our waterways. Clearing removes vegetation that would otherwise intercept, slow, and return rainfall to the air through evaporation and transpiration. Grading flattens hilly terrain and fills in natural depressions that formally slowed and provided temporary storage for rainfall. Urbanization scrapes and removes topsoil and sponge-like layers of humus and compacts the remaining subsoil. Increasing acres of impervious surface nationwide further reduces infiltration and increases runoff.

We acknowledge criticisms of the current stormwater program, such as:

- Insufficient resources to monitor, assess, and develop adequate stormwater permits, review stormwater plans, inspect facilities, provide compliance assistance, pursue enforcement, and carry out adaptive management.
- Disconnects between the standards, monitoring and assessment, TMDL, watershed protection, and NPDES programs.
- Inadequate consideration of stormwater runoff at the local land use level.
- The need for more research on the effectiveness of surrogates (e.g., impervious cover) to characterize both water quality and quantity effects of stormwater, and to incorporate response variables (e.g., aquatic life use support) into surrogates.

- A traditional pollutant and parameter specific approach stymies innovation.
- Insufficient consideration of the cumulative effects of stormwater in a watershed.
- Challenges relating stormwater monitoring data to water quality standards, human health risk, or environmental risk.
- Questionable effectiveness of some stormwater management plans, stormwater pollution prevention plans, and BMPs.

## II. State Suggestions Beyond EPA's Current Vision

As a fundamental matter, we recommend that EPA take the stormwater rulemaking in an entirely different direction. This Section outlines our recommendations in some detail.

### **A New Program Designed for Precipitation Driven Discharges**

ASIWPCA and its state/interstate members are proud of the significant reductions in water pollution yielded by the National Pollutant Discharge Elimination System (NPDES) program since its establishment. The program continues to thrive, although we are concerned that it will be compromised by the addition of more and more sources to permit, as federal funding to support the program declines. A strong federal/state partnership, good data, adequate and sustainable funding, clear performance standards, and prioritization are at the heart of this program. It flourished with its focus on predictable and manageable flows, identifiable end-of-pipe controls, extensive effluent monitoring, and substantial federal and state funding for treatment facilities. The greatest successes occur where the operator of the discharging facility maintains control over the influent and effluent. Applying this successful program to a very different source of pollution – stormwater – has not yielded the same level of progress. Using a traditional, end of pipe regulatory framework for precipitation-driven discharges has led to litigation and uncertainty.<sup>1</sup>

It is time for regulatory requirements designed specifically for precipitation-driven discharges. Cost effective, environmentally sound, and sustainable stormwater management is possible when the realities of stormwater science are acknowledged, and the “point source” NPDES regulatory framework is reworked to include this science. The future of stormwater regulation begs for creativity, innovation, and full collaboration between the federal and state governments.

ASIWPCA recommends that EPA make regulatory changes to divide the § 402 program into two categories: precipitation-driven discharges and traditional process wastewater, end-of-pipe discharges. This will allow new and current regulations for stormwater to be clear and appropriate through stormwater-specific language. The new and revised precipitation-driven discharge regulations can be built around the unpredictability of stormwater, and recognize that BMPs, where selected as the most appropriate and protective control by the permitting authority, when designed, installed, and maintained to specified standards, fully meet permit

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<sup>1</sup> See, e.g., *NEDC v. Brown*, No. 07-35266 (9th Cir. 2010) (finding forest road runoff to be a point source).

requirements.<sup>2</sup> These stormwater regulations can support and foster regional and state-specific approaches that account for differences in precipitation frequency and amount, climate, topography, soil, and development patterns. Where waters are impaired under the CWA, these new regulations can promote adaptive management and timeframes to implement retrofits. Fairness can be promoted among states, communities, existing and new development, and between process wastewater discharges and precipitation-driven discharges.

### **Residual Designation Authority**

Federal regulations provide that the EPA Regional Administrator/State Program Director may designate additional stormwater discharges as requiring NPDES permits. The authority to regulate other sources based on stormwater's localized adverse impact on water quality through NPDES permits is commonly referred to as the Residual Designation Authority (RDA). Federal regulations provide that any person may petition either EPA or the affected state to residually designate discharges as requiring a stormwater permit.

ASIWPCA recommends that EPA take this rulemaking opportunity to clarify where/when it is appropriate for states to exercise RDA. Clarification could also include establishing requirements for petitions, including the appropriate data needed to present a case, as well as how RDA can best be integrated into the TMDL and antidegradation programs. Without such clarity, any impaired watershed in the nation is subject to a petition for designation. The current lack of clarity creates a significant administrative burden on the permitting authority, may result in a non-prioritized use of state resources on remediation or in litigation, and may place unnecessary costs on the regulated community without sufficient environmental gains.

### **Permitting in Impaired Waters**

EPA should reconsider how precipitation driven impairments are addressed and redevelop the NPDES permitting approach to stormwater impaired waters. Current NPDES requirements for impaired waters potentially impede watershed solutions. Watersheds impaired by multiple stormwater discharges do not necessarily require the same level of treatment across each discharge. Permitting requirements, such as 122.4(i), and "cause or contribute" language in RDA, can unnecessarily focus resources on individual discharges and costly offset programs. EPA must consider and recognize state approaches. Where waters are either impaired or threatened primarily by nonpoint sources, a watershed plan may be a better control strategy than TMDLs mixed with weakly supported effluent limits for precipitation-driven discharges.

Some states have found the most cost effective and environmentally beneficial strategies are deployment of BMPs at strategic locations within a watershed, then funded and maintained by a watershed utility district where all property owners in the watershed contribute. Watershed solutions that cut across several properties are sometimes more effective than addressing individual dischargers. Successful retrofitting efforts are usually of a regional or watershed scope.

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<sup>2</sup> Numeric limits can be an important tool in developing protective permits and EPA should also allow and support the use of BMP-based effluent limits when appropriate for a specific discharge.

## Prioritization is a Tool

EPA must use this rulemaking opportunity to include prioritization and risk-based evaluation to focus stormwater permitting, inspection, compliance assurance, and enforcement resources. Prioritization is becoming more and more important due to the high cost of many stormwater solutions.<sup>3</sup> One approach might be to identify stressors on a watershed level (e.g., urban runoff, agricultural runoff, runoff from back roads, point sources), allowing states and municipalities to target stormwater tools and funding to resolve or prevent problems. BMP deployment at the MS4 level can also be prioritized through a rule. Prioritization can help MS4s determine where and when retrofits are implemented.

## State Stormwater Management Programs

State stormwater management programs showcase the importance of watershed specific solutions and local land use decision making to achieve success.<sup>4</sup> State authority for these programs generally exceeds that of the federal government and has evolved based on local, not national, priorities. Many of these programs are the result of a federal mandate under § 6217 of the Coastal Zone Act Reauthorization Amendments.<sup>5</sup> Congress also highlighted the importance of these state programs under CWA § 402(p)(6).<sup>6</sup>

EPA must defer to existing, successful state and/or local post construction stormwater that meet or exceed any new federal requirements. EPA seems overly focused on expanding the federal program, rather than supporting good state efforts. Any national stormwater rule also must recognize an equivalent state program/performance standard.

## Funding for Non-Point Programs

ASIWPCA recommends EPA focus more resources on improving the nonpoint source program to address stormwater impairments, in conjunction with its efforts to update CWA § 402. The 2008 Clean Water Needs Survey identified over \$22 billion in nonpoint source program funding needs across the 50 states<sup>7</sup>. Over the last five years, the annual appropriation for CWA § 319 has been approximately \$200 million. Current § 319 funding is insufficient to run comprehensive nonpoint source programs. ASIWPCA has previously recommended that EPA request at least \$1 billion for § 319 to support state programs dedicated to stormwater and nonpoint source program issues. An increase in § 319 funding would allow EPA narrow the NPDES stormwater universe and make more watershed projects available for CWA § 319 funding (or in the alternative allow NPDES stormwater areas to be

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<sup>3</sup> For example, the Eagleville Brook Impervious Cover TMDL will cost \$7.8 million, roughly \$95,000 per acre of impervious cover treated (<http://clear.uconn.edu/projects/tmdl/progress.htm>)

<sup>4</sup> State Stormwater Management Programs – Florida (1979), Maryland (1984), Virginia (1990), Delaware (1991), South Carolina (1992), Massachusetts (1998), Rhode Island (2002), Wisconsin (2002), New Jersey (2003), Michigan (2007), Minnesota (2008).

<sup>5</sup> § 6217, better known as the *Coastal Nonpoint Source Pollution Control Program* is intended to address nonpoint pollution problems in coastal water and is a requirement for the states and territories with approved Coastal Zone Management Programs.

<sup>6</sup> CWA § 402(p)(6) Regulations

Not later than October 1, 1993, the Administrator, in consultation with State and local officials, shall issue regulations (based on the results of the studies conducted under paragraph (5)) which designate stormwater discharges, other than those discharges described in paragraph (2), to be regulated to protect water quality and shall establish a comprehensive program to regulate such designated sources. The program shall, at a minimum,

(A) establish priorities,

(B) establish requirements for State stormwater management programs, and

(C) establish expeditious deadlines.

The program may include performance standards, guidelines, guidance, and management practices and treatment requirements, as appropriate.

<sup>7</sup> <http://water.epa.gov/scitech/datait/databases/cwns/2008reportdata.cfm>

eligible for § 319 funding). The time is right to find ways to use § 319 funds to solve more stormwater problems.

### **EPA & Lands in Production**

In many states, agriculture and forestry are the dominant land uses, and except for certain animal operations, these discharges are exempt from pollution control requirements. These areas may contribute significant pollutant loads but are outside the control authority of state stormwater programs. Farm policy, incentives, and conservation programs have mixed success in protecting water quality. It is time to reconsider these factors in light of what is now known about the relationship of land use to water quality and quantity. This effort will also have the corresponding benefit of protecting forests and farms from opportunistic land use change, often promoted by government at public expense, such as where we build roads, plan industrial parks, and develop communities.

We urge EPA to promote comprehensive and transparent coordination across all programs that impact water quality, so that resources delivered to those areas produce the greatest impact. USDA Farm Bill funding must prioritize local water quality as an aspect of decision making. EQIP (Environmental Quality Incentives Program) and CRP (Conservation Reserve Program) funds should consider high quality and impaired waters. EPA should work with USDA to use CWA § 319 criteria to direct Farm Bill funds.

Likewise, EPA should take the federal agency lead in developing clear national objectives for controlling stormwater pollution from lands in production (i.e., working lands associated with food, feed, fiber, fuel, and forestry industries). While states do not support expanding the federal NPDES universe to cover these sorts of facilities, there is great support for collaboration of policies designed to reduce and control stormwater pollution. Working with other federal agencies, EPA should lead the effort to develop a national stormwater strategy that takes advantage of existing voluntary programs to the highest extent possible, and proposes new programs that would assist in implementation of national water quality goals.

## **III. Comments on EPA's Stormwater Rule Options**

### **1. General Comments**

While we greatly appreciate EPA's willingness to conduct conference calls with the states, these calls have yet to provide the full view of EPA's direction and activities. Accordingly, these comments represent our opening thoughts on stormwater management and preliminary ideas for refocusing the NPDES program to enhance stormwater management in the coming decades. We include references to EPA's PowerPoint presentation delivered on December 9, 2010 during the EO 13,132 briefing as appropriate.<sup>8</sup>

The federal regulations should include a clear definition of success that looks at indicators of BMP implementation, not just estimates of pollutant loading, which are often not feasible for precipitation-driven discharges. Likewise, a couple of states do have existing requirements that are tied to pollutant removal percentages. EPA needs to be prepared

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<sup>8</sup> EPA Federal Consultation Meeting, *Stormwater Rulemaking Consultation with State and Local Governments*, 12/9/2010.

to address how conversion to a hydrology standard will be handled and be prepared to allow flexibility and time to make adjustments. Any national approach must acknowledge the reality of the frequency and duration of precipitation events in some western states.

The MS4 regulations need to acknowledge that remediation of waters impaired by stormwater discharges will take time, possibly 10-20+ years, and in some cases may not be practical at all. The MS4 program should be written to incentivize the retrofitting of existing impervious surfaces on the basis of a long-term plan and funding should be available for development of these plans. The national stormwater rule must include recognition of an equivalent state program / performance standard.

While a single set of consistent requirements for all MS4s may simplify enforcement, it fails to take into account the inherent differences between the Phase I and Phase II systems. Accordingly, the six minimum control measures (MCMs) should not be flatly applied to Phase I MS4s retroactively. Use of the MCMs should only be integrated into a permit after careful consideration of appropriateness of need. Unilaterally changing the requirements for Phase I MS4s may adversely impact some programs.

Several states believe an MS4 “lite” program for smaller municipalities/towns would be of value. EPA may wish to consider such a program.

## **2. Expansion of the Stormwater Program Universe**

Simply expanding the federal program will not provide an optimal solution to the growing stormwater pollution issue. Given the options offered by EPA, states exhibited a clear preference for extending permit coverage to the jurisdictional boundaries of the MS4.<sup>9</sup> Municipalities manage several different programs throughout their jurisdiction and this appears to be the most reasonable approach to such expansion. Drawing arbitrary lines at urbanized area boundaries creates an impression of inequality. For example, if two parcels are on opposite sides of a road, and one is in the urban area and one is out, but they are both in the same watershed, there is no logic in extending program jurisdiction to only one of the parcels. In addition, permitting urbanized areas fails to cover areas where development is occurring and post-construction requirements are most appropriate, but focuses on areas already developed. Many municipalities are already implementing the program based on their municipal boundaries. Almost all States agreed that the other options were not only infeasible but would likely introduce unintended impacts. At least one state expressed a clear preference for defining MS4s by their watershed, noting that stormwater issues are not confined to political boundaries. States should continue to have the flexibility to designate additional MS4s as deemed appropriate by the state.

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<sup>9</sup> Id. slide 21.

### 3. Performance Standards for New Development

When it comes to new development, EPA must clearly distinguish between “goals” and “performance standards”.<sup>10</sup> The ultimate goal for the stormwater program may be to attempt post-development stormwater hydrologic conditions that approximate and/or mimic the pre-development conditions, however typically this is not achievable. Existing stormwater BMP technology simply does not allow this goal to be met on a consistent basis in all locations. Similarly, with pre- and post-development, volume requirements can be very difficult to achieve where infiltration (retention) BMPs are ineffective due to natural hydrology, topography, geologic features, soil type, or other factors. In addition, in some states water quantity and drainage laws may preclude such retention.

Most states do not support mandating specific numeric effluent limits based on criteria that may exist in a federal rule.<sup>11</sup> We recommend requirements based on design standards that allow flexibility to address the practicality of implementation. When combined with existing post-construction treatment requirements, this approach balances environmental protection and the needs of public and private development. A numeric limit would likely not be feasible for most MS4 systems, and not legally required.<sup>12</sup> A federal rule must avoid being highly prescriptive and provide states with flexibility on meeting a performance standard.

EPA must also consider ongoing maintenance issues associated with facilities. Identification of the responsible party is not always easy or obvious in some States. States support the use of offsets, mitigation, exceptions, and variances as deemed appropriate by the permitting authority, where cost and complexity can be considered as part of the options.<sup>13</sup>

States recommend that EPA refine many of the terms used in the agency’s materials provided for this consultation effort.

### 4. Performance Standards for Redevelopment

EPA should not be highly prescriptive with respect to redevelopment and stormwater treatment, but allow states flexibility in meeting the standard and developing regionally appropriate variances<sup>14</sup>. This stormwater regulation must be protective of threatened waters and promote restoration of impaired waters, but it should also encourage redevelopment to reduce urban sprawl and must avoid becoming the disincentive for this investment. The goal should be to encourage developers to utilize these sites in preference over undeveloped sites. Several states have developed performance standards that reduce the requirements for redevelopment. Others have found that redevelopment post construction stormwater requirements are very effective in achieving water quality goals at the site level. ASIWPCA recommends that EPA let each state set

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<sup>10</sup> Id. slide 22.

<sup>11</sup> Id. slide 23.

<sup>12</sup> Defenders of Wildlife et al v. Browner, 191 F.3d 1159 (9<sup>th</sup> Cir. 1999)

<sup>13</sup> EPA Federal Consultation Meeting, slide 24.

<sup>14</sup> Id. slide 27 (e.g., does “establish specific numeric standards” mean new water quality standards, effluent guidelines, performance standards, or something else?)

and/or retain its own standard.<sup>15</sup> We also support giving credits for redevelopment in certain areas (e.g., brownfields).

## 5. Performance Standards for Retrofits

ASIWPCA believes this aspect of the rule will garner the most attention from municipalities, Congress, and the public. Regardless of the scope of application, retrofits will be enormously expensive for those affected<sup>16</sup>. The cost will likely go beyond simple dollars and cents. Politically, we believe it will be very difficult, if not impossible, to move the stormwater rule forward with retrofit requirements included. States recommend either a separate rulemaking or a guidance document to address retrofits.

Should EPA propose retrofit requirements, ASIWPCA recommends they be focused on MS4s discharging to water bodies impaired by stormwater.<sup>17</sup> In states that are seeing success, retrofitting goes beyond implementation of BMPs and includes regional facilities that address a specific resource (e.g., impaired water/TMDL or flooding issue). Retrofitting serves many needs and has numerous drivers. Retrofit standards must be flexible as it relates to the required timeframes for implementation. Implementation will require the establishment of a funding mechanism, such as a stormwater utility. This is not a simple task and will likely take a community a minimum of two years to put in place.<sup>18</sup>

## 6. Chesapeake Bay Specific Requirements

EPA should propose any Chesapeake Bay specific requirements in a separate rule making.<sup>19</sup> While there is concern over what will be required differently in the Chesapeake Bay watershed versus the rest of the country, separation of the two rules is appropriate and would help reduce the size of the national stormwater rules.

Application of the Chesapeake Bay provisions may be unnecessary in other sensitive watersheds that are much smaller in scope. Many states are already addressing sensitive watersheds and are seeing success. A national approach that is inconsistent with the state's current approach could undermine those successes.

## 7. Industrial Program

Several states support replacing the SIC code system with the NAICS system to modernize the identification of industrial discharges covered by NPDES stormwater regulations is appropriate<sup>20</sup>. Many states believe a phased in approach which utilizes a cross-referencing table would be necessary. EPA should be very careful with the replacement of the SIC code system to avoid unintentional expansion of the NPDES

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<sup>15</sup> A percent reduction in runoff volume may be easier to monitor and more representative of impact than impervious cover measurements.

<sup>16</sup> Examples for nutrient reduction retrofits in Florida - Seminole County, FL (\$7.8 million), Martin County (\$6.8 million), Lake County, FL (\$7.4 million), South Daytona, FL (\$4.4 million), Sarasota, FL (\$16.8 million).

<sup>17</sup> EPA Federal Consultation Meeting, slide 29.

<sup>18</sup> For example, the creation of the Long Creek Watershed Management District in Maine was formed after a 2-year stakeholder process and then a third year of working out details. In the case of watersheds with multiple jurisdictions, this task becomes even more complicated.

There will be many places where even a ten year target is overly aggressive, and should be assessed on a watershed by watershed basis. It may make sense to divide retrofitting into 2 phases, Phase I: Planning (2-3 years) and Phase 2: Implementation (10-20 years).

<sup>19</sup> Id. slide 31.

<sup>20</sup> Id. slide 32.

universe. Other states believe this SIC code update would create unnecessary confusion for regulated industries and thus cannot support this proposed change. However, these states have pointed out that there has been a problem with the SIC listings creating an uneven playing field where similar activities are treated differently. For example, construction companies performing heavy equipment maintenance are not subject to regulation based on the applicable SIC, even though a number of other industries are subject to regulation because of this activity.

## **8. Other Topics**

### **Monitoring Requirements**

States have strong concerns about how EPA establishes monitoring requirements in this rule. Monitoring requirements for stormwater must be robust enough to ensure the data is useful and the collection costs are proportionate to the applicability for water quality. The window of opportunity for obtaining representative samples is very narrow and can vary due to a number of factors, including prior weather conditions and size of drainage area. At least one state has concluded that stormwater monitoring requirements may not be worth the cost/effort. Instead, this state has replaced the monitoring requirement with an inspection program funded by fees charged to the regulated facility. The state was able to garner industry support for these fees by eliminating the monitoring requirement, which has resulted in a greater field presence and cooperation from facility operators.

States have significant experience in stormwater monitoring and highly recommend further dialogue on the option/issues, prior to EPA moving too far down any one path in this rulemaking. While states agree there must be some method of assessing the effectiveness of the program, there are many different assessment approaches that can lead to success and should be considered.

### **General Permits**

One basic NPDES tool that facilitates a comprehensive and efficient process for addressing a category of similar discharges is the “general permit”. General permits contain specific limitations or requirements that apply to all facilities involved in similar operations that can be adequately regulated with a standard set of conditions. As EPA develops and updates the stormwater rules, ASIWPCA recommends a significant focus on maximizing use of the general permit to adequately manage this universe. EPA's should avoid issuing clarification preamble language/guidance that undermines general permit usage.

### **Rural Areas**

EPA should consider providing states with flexibility on how this rule will apply to rural areas. For example, a state may have a facility with a large impervious area (e.g. large parking lot at a truck stop or box store), which could have a low risk of environmental harm. The rule must be able to accommodate the differences between densely populated urban corridors and more rural communities with lower risk, even as both areas might meet an impervious area size threshold. Specifically, we recommend that EPA take an approach similar to 40 CFR 123.35 where it is left to the permitting authority to develop

the process and criteria. This flexible approach better fits the diversity of situations, climate, urban density, and forms of government which different states deal.

### **Low Impact Development and Green Infrastructure**

ASIWPCA supports EPA encouraging low impact development with incentives, but recommends that EPA not mandate design requirements or limits on impervious cover. States and local government are in the best position to determine which requirements are most appropriate. Low impact development projects can lead to long term operation and maintenance issues if not adequately supported and managed.

Utilization of green infrastructure as part of stormwater management can be cost-effective, sustainable, and environmentally friendly. Green Infrastructure can enhance and/or mimic the natural hydrologic cycle processes of infiltration, evapotranspiration, and reuse. At the largest scale, the preservation and restoration of natural landscape features including forests, wetlands, and floodplains, can be critical components. Likewise, green infrastructure may include smaller scale technologies including green roofs, individual trees and tree boxes, rain gardens, vegetated swales, pocket wetlands, infiltration planters, porous and permeable pavements, vegetated median strips, riparian buffers, and so forth. While states would not support a federal mandate for green infrastructure use, ASIWPCA recommends that EPA continue to:

- Develop models for all components of green infrastructure and make them available nationwide.
- Explore and highlight opportunities and incentives for green infrastructure provisions in MS4 permits and CSO Long Term Control Plans (LTCPs).
- Further develop materials to assist permit writers, inspectors, and TMDL developers on the appropriate uses of green infrastructure under the CWA.
- Identify the most effective and innovative uses of green infrastructure through EPA awards or recognition programs.
- Provide technical assistance, training, and outreach to potential users of green infrastructure, including states, cities, counties, utilities, environmental and public health agencies, engineers, architects, landscape architects, planners, realtors, and nongovernmental organizations.
- Develop tools to assist local green infrastructure programs with outreach, training, application, planning and design, monitoring, and plan review.
- Provide the appropriate flexibility so states and cities can tailor solutions and take advantage of the benefits of green infrastructure in a way that best meets their needs.

### **Linear Projects**

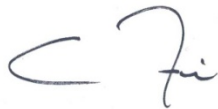
To the extent that EPA is considering stormwater control for linear projects, including transportation facilities, it is important to note that they may not have the same opportunities to treat stormwater or promote infiltration as do other non-linear facilities. States support the development of a specific customized stormwater standard for linear projects. However, some states may not have authority to enforce a standard, as the jurisdiction, ownership, and program management may not align with state law.

#### IV. Conclusion


States fully support stormwater management and improvements to the federal program. ASIWPCA urges EPA to consider the significant benefit of regulating precipitation-driven discharges in a fundamentally different way than traditional point sources. Such a thoughtful step forward will require careful adjustment of the current regulatory structure. ASIWPCA encourages EPA to fully engage states in this process and to draw on our extensive experience regulating precipitation-driven discharges.

We look forward to our continued discussions with the Agency. Please contact ASIWPCA's Deputy Director Sean Rolland at [s.rolland@asiwpc.org](mailto:s.rolland@asiwpc.org) or 202-465-7179 to discuss next steps.

Sincerely yours,



Dr. Andrew C. Fisk  
ASIWPCA President  
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