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Water Environment Federation

Seth P. Brown, Ph.D., P.E.

National Municipal Stormwater Alliance
Executive Director

September 8, 2020

Members of the United States Congress
U.S. Capitol
Washington, D.C. 20510

RE: Sewer Overflow and Stormwater Reuse Municipal Grant Program

Dear Members of the United States Congress:

As the Senate and the House go to conference on Water Resources Development Act of 2020 (WRDA), also referred to as "America's Water Infrastructure Act of 2020", the National Municipal Stormwater Alliance (NMSA) urges Congress to reconsider making changes to critical aspects of the Sewer Overflow and Stormwater Reuse Municipal Grant Program as you also consider the increase in authorized funding levels for the program.

NMSA, an organization representing Municipal Separate Storm Sewer System (MS4)-permitted stormwater programs in over 3,000 communities across 20 states in all regions of the country, has developed a series of suggested edits in the details of this program that can enhance the equitability of funding to states as well as to sectors. The proposed state funding allocation formula recently issued by the U.S. Environmental Protection Agency in the Federal Registry (Docket ID No. EPA-HQ-OW-2020-0282) will provide an unequal distribution of federal funding assistance nationally, and fails to reflex the scope and funding needs of local stormwater infrastructure investments.

The largest increasing source of water pollution in the U.S. is urban stormwater runoff. This runoff reduces water quality in receiving waters as well as increasing the scale and impact of localized flooding. Over 95% of water sector investments come from local sources. While local drinking water and wastewater programs rely exclusively on rate payer fees, the vast majority of funding for stormwater programs originate from local government general funds as only approximately 1,600 of the 7,550 regulated stormwater programs across the country have a dedicated revenue source.

This lack of dedicated funding coupled with the severe impacts to local economies caused by the COVID-19 pandemic creates barriers to critical and needed investments in MS4 programs to address localized flooding and runoff-driven water quality impacts. The spirit of the grant program is to address these issues along with combined sewer overflows (CSOs) and



sanitary sewer overflows (SSOs); however, the project prioritization listed in the legislative language as well as the proposed state funding allocation formula developed by EPA does not meet the full purpose of the grant program. In particular, the provisions of the program significantly favor funding for CSO/SSO investments and limit funding in stormwater/MS4 infrastructure investments.

The proposed state funding allocation formula proposed by EPA utilizes four factors as shown below along with the relative weight of each factor in the formula:

1. *needs identified in the most recent Clean Watershed Needs Survey (CWNS) (50%)*
2. *annual average precipitation (16.67%)*
3. *total population (16.67%)*
4. *urban population (16.67%)*

The 2012 Clean Watersheds Needs Survey (CWNS) Report to Congress (most recent available) includes a statement that the survey only accounted for 21 percent of the MS4 sector when estimating and projecting needs in this sector, and further, that only four states comprised over two-thirds of the identified needs. Relying on this source for half of the allocation scoring will limit the needed funding overall, and in particular, those states who are not represented in the CWNS reporting process. NMSA performed an analysis and found the factors of urban population and total population to be highly correlated, which leads to an overweighting of more populous states overall. Lastly, the premise that arid and semi-arid climates have a proportionally lower need for stormwater/MS4 investment is incorrect. It should be noted that many arid and semi-arid states also have very few CSOs, so by weighting against arid/semi-arid and weighting for CSOs/SSOs will limit funding to these states, and it is these states, such as California, Arizona, New Mexico, Colorado, Utah, Texas, Oklahoma and Nevada, that are most in need of funding to address water supply shortages and other water-limiting conditions.

Similarly, the project prioritization outlined in America's Water Infrastructure Act of 2018 (AWIA 2018) and now in listed out in statute 33 U.S. Code § 1301, section (b) is not applicable to the MS4 sector nor does it provide an equitable method for funding in this sector as well. The existing project prioritization in statute is:

In selecting from among municipalities applying for grants under subsection (a), a State or the Administrator shall give priority to an applicant that-

- (1) is a municipality that is a financially distressed community under subsection (c);*
- (2) has implemented or is complying with an implementation schedule for the nine minimum controls specified in the CSO control policy referred to in section 1342(q)(1) of this title and has begun implementing a long-term municipal combined sewer overflow control plan or a separate sanitary sewer overflow control plan;*
- (3) is requesting a grant for a project that is on a State's intended use plan pursuant to section 1386(c) of this title; or*
- (4) is an Alaska Native Village.*

To correct the inequity in funding, NMSA suggests that the program should divide funding into two, equally-funded pools of grant funding with one funding pool targeting overflows (CSOs/SSOs) and the other focused on stormwater/MS4s and stormwater capture/use investments. This is based upon an analysis of the 2012 CWNS Report to Congress, which



results in almost identical funding needs between these two sectors. NMSA further suggests that the current allocation formula proposed by EPA as well as the project prioritization included in the AWIA 2018 legislation may be relevant for investments/funding in overflow correction projects; however, neither are applicable for the stormwater/MS4 sector. To correct this, NMSA suggests that funding for stormwater/MS4 to be allocated to states based upon the population served by MS4-regulated communities within each state. Regarding the project prioritization criteria, NMSA suggests the following language for a prioritization for stormwater/MS4 project funding:

In selecting from among municipalities applying for grants for stormwater projects under subsection (a), a State or the Administrator shall give priority to an applicant that-

- (1) is a municipality that is a financially distressed community as defined by State criteria;*
- (2) is a municipality covered under an MS4 permit;*
- (3) is in good standing with State or other pertinent regulatory authority;*
- (4) is a municipality with a stormwater utility or another similar form of dedicated revenue to support stormwater infrastructure investments and programmatic activities;*
- (5) has developed a stormwater infrastructure capital and maintenance plan as defined in subsection (d); or*
- (6) is a municipality with a Waste Load Allocation from an EPA-approved TMDL.*

(d) Stormwater Infrastructure Capital and Maintenance Plan

(1) Definition: In subsection (b), the term “stormwater infrastructure capital and maintenance plan” means a multi-year plan established by a community with an MS4 permit that provides details on the number and type of investments in infrastructure providing urban runoff conveyance or treatment services. The plan should also include information on funding and/or financing source or plan as well as funding identified for robust inspection and maintenance.

Communities have been hit hard by recent events and our constituents appreciate your support for federal funding that will address urban runoff water quality and quantity issues. If you have questions or would like additional information, please contact Seth Brown, the executive director of the National Municipal Stormwater Alliance, at 202.774.8097 or seth.brown@nationalstormwateralliance.org.

Sincerely,

Scott Taylor, PE, D.WRE
Chair, National Municipal Stormwater Alliance

Randy Neprash, PE
Vice Chair, National Municipal Stormwater Alliance

Jennifer Watson
Secretary, National Municipal Stormwater Alliance

Seth P. Brown, PE, PhD
Executive Director, National Municipal Stormwater Alliance