



# **NAFSMA Position on Municipal Stormwater and Environmental Management Issues**

**(Adopted by Directors on November 14, 2023)**

## **I. Introduction**

The National Association of Flood and Stormwater Management Agencies (NAFSMA) represents local and regional agencies dedicated to the improvement of stormwater quality through the implementation of technically feasible and fiscally responsible stormwater management programs. NAFSMA members are stewards of the environment and support the core mission of the United States Environmental Protection Agency (EPA) in its efforts to reduce pollution in our receiving waters through the development and implementation of stormwater management regulations and guidance. The NAFSMA Stormwater Committee identifies and addresses stormwater quality and quantity issues affecting local governments, including tracking, evaluating, and making recommendations regarding federal legislation and regulations. The Stormwater Committee also coordinates with other associations regarding stormwater quality and quantity management issues. In the spirit of cooperation and collaboration, NAFSMA offers the following positions.

NAFSMA is prepared to work with Congress and the EPA to refine the existing regulatory framework for municipal stormwater programs to ensure the improvement of stormwater quality and the protection of our nation's waters. Many municipalities throughout the country are making significant improvements in managing stormwater quality.

NAFSMA supports the Clean Water Act (CWA) and agrees that healthy water bodies should be protected, and impaired water bodies restored. To facilitate implementation of the CWA, it is important that the rules and guidelines be clear and feasible. To that end, NAFSMA members pledge to work collaboratively with EPA and their respective state regulators to develop stormwater management permits and programs that are effective and affordable.

As stewards of the water resources environment, NAFSMA supports local, regional, state, and federal efforts to develop climate adaptation and mitigation strategies to protect and improve the natural and built systems that support sustainable economies and environmental resilience. NAFSMA joins our partners working at the local, regional, and national levels to address climate challenges and commits to work with appropriate federal agencies as they integrate climate adaptation goals into their individual policies and programs.

## II. Promote Multi-Benefit Strategies

EPA and state regulators should allow municipalities to focus limited resources on compliance strategies to promote projects that make the best use of limited resources and can provide multiple environmental and/or community benefits to accelerate overall environmental protection and restoration.

EPA should develop guidelines for permit writers to encourage the use of an integrated approach/integrated planning framework that encourages and incentivizes regional stormwater recharge and reuse where appropriate as an alternative to the traditional approach to stormwater regulations.

This integrated approach needs to be comprehensive with guidelines that eliminate barriers for communities to implement Nature-based Solutions and Green Infrastructure, including any permitting processes as well as operation and maintenance requirements.

Some examples include:

- Stream and stormwater quality
- Neighborhood flooding reduction
- Pollution and trash reduction
- Habitat improvement
- Open space and recreation
- Urban heat islands

NAFSMA provides continued support of EPA's Water Infrastructure Finance and Innovation Act (WIFIA) program which accelerates investment in our Nation's water infrastructure by providing long-term, low-cost supplemental loans for regionally and nationally significant projects. Multi-benefit stormwater and green infrastructure projects are being implemented across the country using WIFIA's program, providing communities the chance to tackle large and impactful projects in stormwater that otherwise would not be feasible.

## III. Per- and Polyfluoroalkyl Substances (PFAS)

EPA's proposed designation of six PFAS including Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) will create significant financial burdens on water systems that are protecting public health through drinking water treatment of per- and polyfluoroalkyl substances (PFAS). Public works agencies need technical guidance and financial resources to address PFOA and PFOS rather than regulations that will impose liability on wastewater and stormwater facilities. NAFSMA encourages EPA to work with public works agencies to determine the most effective way to address the challenges arising from PFAS. To this end, EPA must focus on a "polluter pays" approach to addressing PFOA and PFAS in wastewater and stormwater, focusing on source level contamination rather than end of stream solutions. EPA must recognize that public utilities do not create and are not responsible for the contributions of these pollutants to the environment.

#### **IV. Maximum Extent Practicable (MEP) with Results**

NAFSMA supports and encourages the development of science-based plans that include concrete actions to address water quality and can serve as the compliance requirements for Municipal Separate Storm Sewer System (MS4) permits. MS4 permits and programs must be science-based and focused on achieving meaningful results that improve water quality.

The MEP standard was intended to be an economically achievable standard of compliance that provides flexibility to individual Permittees to obtain pollutant reductions that cannot be achieved through traditional approaches. However, because the stormwater program remained a part of the National Pollutant Discharge Elimination System (NPDES) program, there is a great deal of debate about the linkages to the NPDES requirements for true traditional point source discharges. This has resulted in several lawsuits and is pushing local government agencies into costly, unreasonable programs that negate the intent of the 1987 amendments to control non-point sources to the MEP. It is important that MS4 permit programs remain focused on achievable requirements that result in meaningful improvements to water quality. Permit requirements focused on eliminating pollutants that emanate from legal, often federally approved, uses of common products such as fertilizers, pesticides, and brake pads, or from sources beyond the control of MS4 permittees such as bacteria from wildlife or total suspended solids (TSS) from desert washes, should be avoided. In addition, approaches that rely on numeric limits to stormwater pollutants should also be avoided because they are often unobtainable and are inconsistent with the MEP standard of compliance.

#### **V. Reform the Compensatory Mitigation Process**

The U.S. Army Corps of Engineers (USACE) and EPA should work together to reform the process to develop compensatory mitigation programs for impacts to waters of the United States to address disparities more effectively between mitigation needs and resources in urban as opposed to rural communities. The current framework is biased towards compensatory mitigation projects and programs that are proposed to be implemented in rural areas. This bias is problematic because most impacts that require compensatory mitigation are in urban communities. Common sense, science-based parameters for compensatory mitigation programs in urban communities should be used to design mitigation actions in urban communities.

In addition, the interagency review team (IRT) process should be reformed to enable the USACE to keep the process moving forward and ensure that participating regulatory agencies are meeting required comment and review deadlines. Furthermore, the IRT process should not be bogged down by a lack of consensus on the part of IRT members. Very often, the process to develop compensatory mitigation projects is delayed by disagreements among IRT members, preventing forward progress. The USACE should be enabled and encouraged to note diverging opinions on elements of proposed compensatory mitigation projects while keeping the process moving forward. The goal should be science-based compensatory mitigation that is defensible while also being efficient and effective.

#### **VI. Bipartisan Infrastructure Law and Clean Water State Revolving Loan Fund**

EPA and the states should prioritize funding for stormwater and flood management infrastructure projects with the generational funding authorized in the Bipartisan Infrastructure Law (BIL). The EPA provides grants to all 50 states to capitalize the Clean Water State Revolving Loan Fund (CWSRF) program. This program provides low-interest loans to applicants to fund projects that are designed in whole or in part to achieve water quality improvements. There are a variety of different projects eligible for funding including construction of municipal wastewater facilities,

control of nonpoint source pollution, green infrastructure, projects to protect estuaries, and other types of water quality projects. Stormwater and flood protection infrastructure can provide important water quality benefits to communities, particularly related to nonpoint source pollution. For example, flood control detention basins allow sediment and pollutants to settle out of storm flows before reaching receiving waters downstream. A variety of green infrastructure approaches throughout the country have been proven to help enhance water quality by reducing nonpoint sources of pollution. Historically, however, CWSRF funding has been predominantly allocated to projects funding publicly owned treat works (POTWs). Very little (less than 4 percent) of available funding is allocated by the EPA and/or states to funding nonpoint source pollution control through stormwater and flood management projects. Given the recent historic investment in the CWSRF program nationwide, EPA and the states should prioritize funding for stormwater and flood management infrastructure through the CWSRF program.

In addition, CWSRF needs to implement more flexibility in the programs for funding projects. There have been tremendous innovations in green infrastructure and nature-based solutions in the last few years to address water quality issues. This is the perfect opportunity to further advance innovation with the influx of federal of funding from BIL. The CWSRF programs should encourage these advances by providing more flexibility in the criteria for funding projects.

## **VII. Long-term Outcome Reports.**

Normal body text style EPA and state regulators should consider shifting to five-year environmental outcome reports that focus on less frequent, but more effective, environmental assessments. Current annual reporting and monitoring requirements are often paper exercises that waste fiscal and staff resources without providing much in the way of actionable information on program effectiveness. EPA and state regulators should also consider developing long-term monitoring programs that:

- Eliminate duplicative monitoring requirements for permitted stormwater systems,
- Eliminate redundant stormwater characterization monitoring,
- Focus attention on evaluating effectiveness of the field applied best management practices (BMPs),
- Evaluate the long-term effectiveness of the permittee's administration of its stormwater pollution prevention plan (SWPPP; a.k.a. stormwater management plan or SWMP), and
- Provide the basis for the adaptive management of the SWPPP (or SWMP) and its field BMPs.

Monitoring requirements for BMPs, including low impact development (LID) and green infrastructure (GI), should be minimal and not duplicative for BMPs that have been proven to be effective in eliminating stormwater contaminants.

## **VIII. Compensatory Mitigation Credit for Encampment Restoration**

In recent years, NAFSMA members have faced unprecedented growth of people experiencing homelessness (PEH) camping near flood damage reduction systems. This poses a risk both to those living in these encampments and to neighboring communities dependent on those systems for flood protection. Many of these flood control projects were built by local agencies with federal partners, such as USACE. In addition to flood risk resiliency issues, members have also reported water quality issues near streams and urban rivers where such encampments exist. To address the environmental impacts of camps, NAFSMA members have diverted substantial resources from construction and maintenance of flood control facilities to environmental clean-up efforts.

Clean-up of camps are time consuming and costly that is undertaken almost exclusively by local agencies at tremendous cost and resources. Some local agencies have been successful at negotiating mitigation credit from state permitting programs for activities associated with camp clean-up activities.

NAFSMA encourages USACE and EPA to work with other federal, state and local partners to develop and implement mitigation credits for houseless encampment clean-up actions that are taken by local agencies. These credits should be made available to local agencies as mitigation for impacts to wetlands and streams associated with the construction, operation, and maintenance of flood control activities.

## **IX. Bipartisan Infrastructure Law**

NAFSMA applauds the passing of the Bipartisan Infrastructure Law (BIL) in November 2021. BIL is a generational investment in rehabilitating and updating the nation's water infrastructure. Congress has directed that most Infrastructure Act funding for water projects will be channeled through state revolving loan fund (SRF) programs for drinking water and wastewater. As these funding programs are developed, NAFSMA encourages program administrators to develop efficient application and administration processes. In addition, these programs need to be flexible and recognize regional differences in the states.