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May 16, 2010

Kevin Weiss

Water Permits Division

U.S. Environmental Protection Agency

Room 7334 EPA East 1200 Pennsylvania Avenue, NW Washington DC 20460

RE: Comments on November 12, 2010 EPA Memo on Stormwater TMDLs

The Water Environment Federation is pleased to submit comments on the November 12, 2010 memo entitled “Revisions to the November 22, 2002 Memorandum ‘Establishing Total Maximum Daily Load (TMDL) Wasteload Allocations (WLAs) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs’”. These comments are being submitted in response to a March 17, 2011 letter released by EPA requesting comment on the memo highlighted above.

Formed in 1928, WEF is a not-for-profit technical and educational organization with 36,000 individual members and 75 affiliated Member Associations representing water quality professionals around the world. WEF and its Member Associations proudly work to achieve our shared mission of preserving and enhancing the global water environment.

These comments, developed via a WEF workgroup process, are provided in six categories:

1. Process
2. Maturity of Field
3. Consistency with States
4. Surrogates
5. Need for Additional Guidance
6. Expansion of Numeric Effluents as WQBELs

General Comments

1. **Process** – WEF has maintained a close relationship with EPA and is viewed as a resource for information on technical issues related to various water-related topics; however, WEF – and other groups – were not included in the process to develop, review or comment on this document prior to its release. WEF believes that this memo should be withdrawn and included with the stormwater rulemaking effort.
2. **Maturity of Field** – The memo makes the case that the “stormwater permit program has matured,” and that, “states and EPA have gained considerable experience in developing TMDLs and WLAs that address stormwater sources...the technical capacity to monitor stormwater and its impacts on water quality has increased,” but there is no documentation cited on these points. WEF requests that the information used to make this statement be made available for review. Being a leader in the development and production of technical information in the water sector, WEF would welcome the opportunity to partner with EPA in the effort to collect this information.

3. **Consistency with States** – Similar to Point 2, EPA suggests that the guidance would bring the TMDL program in line with frameworks currently used at the state level by highlighting three examples, all which fall within the same EPA region. WEF believes that this information is not representative of the country, as a whole, and requests that the EPA provide a more robust review of the literature and the TMDL landscape be performed which better represents a national trend. Again, WEF would welcome the opportunity to work with EPA in order to collect data in this effort.
4. **Surrogates** – While WEF generally agrees with the hydrologic approach to stormwater management (see attached position statement), the basis of the use of stormwater flows or impervious cover as a surrogate for related impacts to waters can be tenuous, and therefore, careful consideration should be made when applying this causal relationship. The linkage between stormwater discharges and the cited impairment should be well-documented with the data showing a clear relationship between the proposed surrogate and associated impairment. Also, there are circumstances where the use of impervious cover as a surrogate may not be practical. For instance, there are many examples where a regulated discharger (MS4) controls or owns a limited amount of impervious cover. Considering this, and other similar situations, WEF recommends that more information, such as case studies or examples, be provided in order to more clearly illustrate conditions or situations where the use of surrogates, as highlighted in the memo, would be considered technically feasible and appropriate.
5. **Need for Additional Guidance** – There are a number of issues mentioned in the memo that require additional clarification. Specific areas of additional guidance needed is:
  - a. The term “reasonable potential” is used to define the ability to develop numeric criteria – this term needs to be clearly defined in order to be implemented with case study examples provided to illustrate pragmatic situations where this threshold is met.
  - b. A phrase requiring definitional clarification is “objective and measurable elements,” in terms of requiring numeric effluent limits for stormwater discharges. Two examples are given in short (schedule of BMP installation and level of BMP performance); however, a more robust description of what is expected should be provided.
  - c. The requirement for “adequate monitoring” where WQBELs are expressed as BMPs is not clearly outlined. Technical input on EPA’s view of minimum adequate monitoring techniques or data would help to reduce unnecessary capital (both money and time) spent on onerous monitoring programs.
  - d. Detailed technical information is needed for the disaggregation of stormwater sources in a WLA. For instance, what are the criteria used when determining the “extent feasible” for the disaggregation of pollutant sources? Answers to this, and other similar questions should be clearly outlined in complementary documentation.
6. **Expansion of Numeric Limits as WQBELs** – Before the regulatory agencies choose to address TMDLs through an expanded use of numeric water quality-based effluent limitations or surrogates for pollutant parameters in MS4 NPDES Permits, there needs to

be a better foundation built upon which TMDLs can be established. By way of example, in Georgia a Phase I MS4 permittee is required, by NPDES Permit, to monitor an impaired stream segment, implement BMPs to address the impairment, and annually report on the effectiveness of those BMPs. Yet the reach for the impaired stream segment is not well defined. In one specific impaired stream segment, Bay Creek, the State Environmental Protection Division (EPD) set the reach for the Fecal Coliform impairment as the first named stream upstream and downstream of the sampling location associated with the impairment. There was no sampling done upstream or downstream of the impairment, instead the limits of the impairment were arbitrarily assigned along the stream reach. This guess regarding extent of impairment was most likely made because the State regulatory agency did not have the personnel or resources to adequately sample in order to clearly define the stream reach. As a result a small town, Grayson (population 1500), has been caught up in the regulatory actions.

Grayson is a small town that was identified as a Phase I MS4 Permittee due to it being contiguous to Gwinnett County (population roughly 805,000). Since the impaired stream reach starts within the City of Grayson, the City must monitor the impaired stream segment, implement BMPs to address the impairment, and annually report on the effectiveness of those BMPs. The City has contracted with Gwinnett County to perform the monitoring activities. Recent samples along the stream reach have led the County to suspect that the impairment is not actually located within the City. As a result the County is now using the methodology defined by EPD to reassess a stream reach, in hopes that this section of the impaired stream segment will be de-listed in the near future. This small town has had to arrange for a significant amount of work: sampling, BMP implementation, and reporting requirements, due to the fact that the stream reach was initially defined poorly. Every dollar spent on correcting a poorly defined problem is a dollar not available on effective solutions. This opportunity cost of wasted revenues works against the goal of obtaining fishable and swimmable waters.

For the items cited above, among other items noted in this document, WEF reiterates that this guidance should be withdrawn and included with the stormwater rulemaking.

#### WEF Contact Information

WEF appreciates the opportunity to provide these comments and hopes that they will be helpful to EPA. We would be happy to provide additional information or clarifications.

If you have any questions, please contact Seth Brown, Public Policy Manager and Stormwater Team Leader, WEF Government Affairs, at [sbrown@wef.org](mailto:sbrown@wef.org).

Sincerely,

A handwritten signature in black ink that reads "Tim Williams". The signature is written in a cursive, slightly slanted style.

Tim Williams  
Managing Director, WEF Government Affairs