

December 27, 2017

Via Email: NPDEScompliance@EPA.gov

RE: U.S. Environmental Protection Agency – NPDES Compliance Inspection Manual, Interim Revised Version, January 2017

Dear Sir or Madam:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA or Agency) *Interim Revised NPDES Compliance Inspection Manual* (January 2017). NACWA represents the interests of the nation's public wastewater treatment utilities or clean water agencies. NACWA has been encouraged by recent actions taken by the Agency to focus on true compliance assistance – especially when working with entities like NACWA's public agency members – to help regulated entities meet their Clean Water Act (CWA) obligations, instead of defaulting to an enforcement-first posture. NACWA recommends that EPA update its resources, including the Manual, to reflect this change.

General Feedback on the Manual

NACWA is pleased to see that the Manual includes a strong disclaimer, noting that in the “event of a conflict between the discussion in this document and any statute or regulation, this document would not be controlling.” This statement could be further strengthened by adding reference to applicable NPDES permits or other legally binding requirements, as was done earlier in the disclaimer.

NACWA suggests that at the beginning of each chapter there be a statement, consistent with the Agency's renewed focus on cooperative federalism, that each authorized state has the flexibility to concentrate their inspection efforts in the best way they determine in order to protect the quality of the waters in their state. NACWA also suggests that EPA direct Agency inspectors to coordinate any EPA-led inspections with the state regulatory agency.

Specific Comments – Chapter 1

The section on inspection targeting (p. 19) discusses the use of the Enforcement and Compliance History Online (ECHO) database for the targeting of enforcement actions. NACWA has continually raised concerns about the accuracy of information in the ECHO database and has concerns about relying on that information for compliance inspection purposes. At the very least, EPA should clarify

that inspectors must use caution in relying on the data in ECHO and that they should not base their decisions solely on the information in that system.

In addition, more information is needed on how the Inspection Targeting Model (ITM) score is calculated and the meaning of the score (e.g., the total possible range of the score and what range is considered high, average and low).

At the top of page 23, the manual states:

Thus, inspectors can use the results of the Effluent Limit Exceedances Search in ECHO to narrow down facilities that are potential targets for inspection.

This statement is open-ended and implies that inspectors may simply use this tool to choose which facilities to inspect. NACWA is concerned about the use of ECHO in this manner given the accuracy of the information it has seen in the database for some NACWA members. This also raises questions about the role the ITM score plays and how all of this impacts the frequency and type of inspection action (e.g., will major facilities with a favorable ITM score see less frequent inspections; instead of a compliance evaluation inspection and/or compliance sampling inspection, will a favorable ITM score result in an off-site desk audit)? This should be explained further in the Manual.

Chapter 2

The DMR Pollutant Loading Tool (<http://cfpub.epa.gov/dmr/>) website referenced in Chapter 2 states that it is being transitioned into ECHO and that EPA plans to retire this site in late November 2017. The Manual should be updated with the correct website listed.

Chapter 4

It is unclear why the “Facility Site Review” chapter only discusses wastewater treatment plants. EPA should explain why it is focused on wastewater plants and whether and how the site review chapter should be applied to other facilities.

Assessing many of the elements in Chapter 4 would require a great deal of wastewater treatment expertise for the inspectors. The chapter could be a valuable compliment to training, but the expectation that an inspector will be able to adequately and accurately evaluate all of the conditions contained within Chapter 4 is unreasonable. There are a number of elements that are simply too specific and impossible to assess while others are too vague. Specifically:

- **Influent characteristics:** It is unclear how an inspector evaluates combined sewer loads, infiltration and inflow, industrial contributions, and diurnal/seasonal load variations.
- **Flow indicators:** “excessive septage dumping”. The term excessive is subjective. Presumably the inspector is trying to identify if the treatment facility is experiencing challenges due to septage received. This needs to be reworded to provide the inspector with guidance on identifying potential problems associated with septage received.

- The “wastewater collection system” section is outside the scope of the NPDES inspection process.
- Grit removal: “Less than typical grit accumulation in subsequent processes.” This needs clarification; it is uncertain how an inspector would evaluate this.
- Many of the checklists for the advanced physical treatment units add little value to the inspection process. These are typically unique, one-off systems for which most of the information provided would not apply. Conversely, the nitrification and denitrification checklists within this section are too general to be of value. The inspector would be better served to simply rely upon the secondary process checklists.
- The chlorination and dechlorination checklists in the disinfection section are too specific; they both apply to gaseous systems only.
- Consider adding “Low UVT” and “Inadequate dosage applied” as bulleted items in the UV checklist section.
- The sludge disposal checklist incorporates items that are outside the scope of the NPDES inspection process: Liquid sludge applied to landfill site, Sludge fails paint filter test, and Inadequate coverage of sludge in subsurface plow injection system, are all examples.
- Table 4-1: There are a number of items that are not tied to compliance with the NPDES permit and need to be omitted from the checklist. This checklist needs to be linked directly to the permitted requirements of the Operations and Maintenance manual as a mechanism for evaluating operation functions. For example, checklist items for energy plans, borrowing personnel, staff motivation and first-line supervisor support are simply not an appropriate part of any NPDES inspection.
- The facility site review checklist includes items that are not appropriate for inclusion in the NPDES inspection. Some items such as immunizations are not a requirement while others are more appropriate for an Occupational Health and Safety Administration (OSHA) or safety inspection.

Chapter 5

The Manual is not the appropriate forum for providing educational materials on sampling techniques and sample types. Table 5-1 is difficult to follow and not required for evaluating compliance with the sampling requirements of the NPDES permit. Inspectors should be educated on all aspects of sampling so that they understand the process and are capable of collecting the appropriate sample types independently of the NPDES facility. However, that training should not be included in the NPDES inspection manual.

Within the definition for “Split Samples” is language that indicates that the split sample is collected as follows: “shake the composite sample well and half fill the EPA sample container, then shake the

composite again and fill half of the permittee's container." This is incorrect. Sample containers nearly always need to be completely filled. The volume of the sample container is typically aligned with the volume required for sample analysis. In most cases, half filling the container will result in insufficient sample for analysis or an unrepresentative sample due to changes in quality associated with exposure to air.

Chapter 6

The manual (p. 121) instructs the inspector to evaluate the precision of float driven flow meters when flows are stable. Instrument technicians and/or personnel properly trained on flow meters should be the only individuals touching the meters and their appurtenances. Tampering with the floats will affect totalizer readings, composite samples, etc. and thus should not be disturbed. Operators and inspectors can still conduct flow accuracy checks without touching the float.

Chapter 7

Objectives and Requirements:

- This section should reference 40 CFR §136.7 for the QA requirements of methods performed in support of the NPDES program.
- Use of the term "QA/QC" is not correct. Replace the first reference to QA/QC with "Each permittee's laboratory is required to have a quality assurance program that includes quality control requirements and procedures" and make adjustments to the text in the rest of this paragraph to replace "QA/QC" with language consistent with how QA and QC are defined in the first paragraph. QA and QC are not interchangeable terms. These changes should be made through all of Chapter 7.

Sample Handling:

- The TNI 2009 Standard has sample handling requirements consistent with ISO requirements and is clearly stated and auditable. Replacing the bulleted list in this section with these requirements would streamline sample handling requirements. This bulleted list is very specific and limits the flexibility of laboratories to design their own procedures.
- Specifying that the sample custodian is the only laboratory employee that can dispose of samples is prohibitive. Requiring a procedure for sample disposal gives laboratories more flexibility and would be auditable.
- The first and second bullets are too prescriptive. Combine the two to read: "Ensure sample storage areas are such that sample integrity, including preservation, is maintained during storage."

Laboratory Analysis Techniques Evaluation:

- ASTM needs to be added as a source of methods in the second paragraph, especially with the recent approval of the latest Method Update Rule (MUR) that included many ASTM methods not previously listed.

- The section “Evaluation of Permittee Laboratory Facilities and Equipment” should be modified by adding language stating: “There shall be effective separation of incompatible analyses, such as microbiology and volatile organics. Measures shall be taken to ensure there is no-cross contamination throughout the laboratory.”
- This section states the inspection should include a check of safety equipment, and that deviations should be reported to OSHA. The scope of this type of assessment should be limited to permit compliance which, in most cases, does not include specific laboratory safety requirements.

Quality Assurance and Quality Control:

- The section “Evaluation of the Precision and Accuracy of the Permittee Laboratory” includes language referring to sample batches of more than 10 samples; this language should be changed to “Sample spikes should be performed on one sample per batch, or at a frequency of 10 percent, whichever is greater.”
- The last sentence in the second paragraph is not correct. Sample spikes are not a QC measure to determine accuracy of a method. Sample spikes determine if the component of interest can be recovered in a specific sample matrix. A laboratory control sample is the correct quality control measure for method performance and accuracy.
- The accuracy of a method is determined by the use of Laboratory Control Samples rather than matrix spikes. The reference to matrix spikes should be removed from the bulleted list under “evaluating accuracy of the measurement process.”
- The section “Evaluation of Permittee Data Handling and Reporting” should include a reference to the use of electronic records to accommodate the ever-growing use of technology and electronic record keeping systems.
- The section “Evaluation of Permittee Laboratory Personnel” should be changed to “Evaluation of training records and demonstration of capability.” An inspection should be an evaluation of systems in place to ensure permit requirements are met. Such an inspection is not based on individual personnel; it is based on the quality assurance program, training records, and ongoing demonstration of method performance using quality control information.
- The section “Overview of the Discharge Monitoring Report QA Program and How it Relates to the Inspection Program,” should include a reference to the TNI Proficiency Testing (PT) Program since many states no longer require DMR QA participation for NELAP accredited laboratories that complete the required two PTs annually.

- The list of “highlights” is a set of subjective observations and should not be included in this document. It is not clear how this list provides guidance for inspectors to successfully evaluate a permittee laboratory performing regulatory analysis.

Chapter 8

The information provided in table 8-1 is inconsistent with EPA guidance for Whole Effluent Toxicity (WET) programs and the source for this information is unclear. The sampling requirements are clearly outlined in the permit and the inspector only needs to reference that information in order to determine if the appropriate sample type was collected.

This chapter clearly includes elements of WET testing laboratory inspection. WET testing laboratory inspection is not under the purview of the NPDES compliance inspection, but would instead be part of a separate laboratory inspection program where lab accreditation takes place. All elements in the Manual applicable to the laboratory inspection should be flagged and omitted from inspections when there is a lab accreditation program in place.

The language which suggests that the Test of Significant Toxicity (TST) approach is a “recommended” statistical analysis alternative to a NOEC is inaccurate and not consistent with official EPA WET guidance. Further, the TST endpoint is not referenced in 40 CFR Part 136. Toxicity endpoints are specified in the permit and are not within the purview of the inspector to determine if they are appropriate.

As with Chapter 5, much of Chapter 8 appears to be structured around educating the inspector on WET testing. An inspection manual is not the appropriate document for this level of in-depth education on a specific topic area. There needs to be a separate training manual to provide background education on WET. The inspection manual must be limited to providing guidance on assessing compliance with the permit.

Chapter 9

Table 9-2 (list of categorical IUs) should be updated as follows:

- Duck Operations is listed. The title of Part 412 is “Concentrated Animal Feeding Operations (CAFO)” (Ducks are subcategory).
- The three categories in the last column (“Under Development”) are now final and in effect:
 - a. Steam Electric Power Generating (Part 423). It is already listed in the main column.
 - b. Shale Gas Extractions is in effect as “Oil and Gas Extraction” (Part 435).
 - c. Dental Office (Part 441).

Chapter 11

Page 273 states: “The inspector should *ensure that the permittee is minimizing the discharge of pollutants in stormwater runoff*” (emphasis added). This is too subjective. The inspector should ensure that the BMPs (structural and non-structural controls) are installed and properly maintained and operated to ultimately reduce the discharge of pollutants to the maximum extent practicable.

Pages 273-274 state: “With the exception of municipal sites, the inspector should evaluate *the effectiveness of the MS4 inspector*, rather than leading the inspection during field activities” (emphasis added). Here again, this is too subjective for an EPA inspector to evaluate the effectiveness of the MS4 inspector. The EPA inspector should be evaluating whether the MS4 inspector is appropriately trained or qualified to conduct their respective responsibilities.

Chapter 13

Unlike the Combined Sewer Overflow (CSO) Control Policy, there is no federal policy or regulation to guide the management of sanitary sewer overflows. Chapter 13 addresses several issues, including the management of overflows from satellite collection systems and capacity, management, operations and maintenance (CMOM) programs, that have never been addressed comprehensively through an official public notice and comment process or federal rulemaking effort. NACWA specifically requests that EPA make the following changes to the chapter to make it consistent with current law and existing policy:

- EPA must revise footnote 10 on page 299 to be consistent with current law. The footnote states: “Any discharge from a municipal satellite collection system without a permit would be a violation of the CWA and would be subject to potential enforcement.” Discharges from a collection system must reach a water of the United States before they are considered a violation of the CWA. Since collection systems do not typically have their own NPDES permit, the proper operation and maintenance provisions in 122.41(e) would not apply.
- The second sentence of the section on Prohibition of Unpermitted Discharges (pp. 300-301) should be revised. It currently states:

This includes dry weather overflows and discharges from municipal satellite collection systems without permits.

The phrase “that reach waters of the United States” should be added to the end of this sentence.

- Capacity, Management, Operations and Maintenance (CMOM) programs are discussed on pages 302 and 303, as if CMOM was a federal requirement. The Manual also references a Region 4 document on helping a municipality with its CMOM program. The Manual should make it clear that these CMOM programs are not federal requirements, though the standard provisions for proper operation and maintenance do contain some of the same elements.
- Notification Procedures (p. 300) – The Manual states that any noncompliance, including overflows that reach a water of the United States or that are caused by improper operation and maintenance, be reported on the Discharge Monitoring Report (DMR). The referenced citations, 122.41(l)(6) and (7), do not require reporting of overflows on the DMR. This section should be revised to separate out DMR requirements from other reporting requirements.

Again, NACWA appreciates the opportunity to comment on the *Interim Revised NPDES Inspection Manual*. Please contact me at chornback@nacwa.org or 202-833-9106 with any questions or to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback". The signature is fluid and cursive, with the first name "Chris" being the most prominent part.

Chris Hornback
Chief Technical Officer