January 31, 2011

Ms. Connie Bosma  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, NW, Mail Code 4203M  
Washington, D.C. 20460

Subject: Executive Order 13132: Stormwater Rulemaking Consultation with State and Local Governments

Dear Ms. Bosma:

On behalf of the nation’s cities, towns, counties, and municipal governments, we appreciate the opportunity to provide some initial reaction to the U.S. Environmental Protection Agency (EPA) on the range of regulatory options being considered for the upcoming stormwater rulemaking pursuant to Executive Order 13132: Federalism. A number of our cities and counties are currently Phase I or II municipal separate storm sewer systems (MS4s) jurisdictions falling under the Clean Water Act’s National Pollution Discharge Elimination System (NPDES) permit program and therefore have a strong stake in the outcome of this rulemaking.

The availability of an adequate supply of clean water is vital to our nation, and integrated and cooperative programs are important for protecting water quality. To that end, it is important that the federal, state and local government work together to craft reasonable and workable stormwater rules and regulations.

While we support the goals of the Clean Water Act (CWA), our general concern about the proposed rulemaking is the fact that EPA’s own data indicates that stormwater discharge is only responsible for the impairment of an average of less than 10 percent of all lakes, rivers, streams, and estuaries; yet, because a cost-benefit analysis has not yet been completed, there is no evidence to indicate that having local government spend billions of dollars on stormwater infrastructure to address this impairment would yield cost-comparable benefits. Additionally, as a part of this rulemaking it might be helpful to know more about the steps EPA is taking to address the causes of the remaining 90 percent impairment.

Next, we have specific concerns related to some of the regulatory options being considered, including the possibility of expanding the universe of federally regulated MS4s, the possibility of establishing a numeric standard for stormwater, the possibility of requiring municipal retrofits, and the possibility of imposing Low Impact Development and green infrastructure requirements.
a. Expanding the universe of federally regulated MS4s

As outlined in the consultation document, the EPA rulemaking could expand the current MS4 program boundary outside of the urbanized area to encompass currently unregulated areas. Not only would this have the affect of substantially increasing the number of jurisdictions that would have to comply with the NPDES permit program, but it could push development further outside the regulated area and lead to increased sprawl.

The current MS4 system is very cumbersome, costly, and time consuming for both Phase I and Phase II jurisdictions. Expanding the scope of the program will further complicate the current regulatory mandate by adding another layer (or two) of bureaucracy. Additionally, it is likely that the costs and effects of an expanded MS4 program will fall disproportionately on smaller communities, compounding their challenges of complying with new federal mandates. Small rural cities and counties generally have part-time elected officials and a small number of staff that handles a wide range of city and county related issues. That means a city or county may only have one MS4 representative who also handles a myriad of other non-stormwater related tasks. These small jurisdictions also have smaller budgets and may be unable to hire consultants or purchase expensive equipment and infrastructure for required upgrades.

Regardless of size—urban, suburban, or rural—local governments nationwide are coping with shrinking budgets. Revenues—as generated by property, sales, and income taxes—have declined and ways to effectively raise more revenue are limited. Additional federal mandates require additional money. At a time when cities and counties are laying off their staffs, delaying or cancelling capital infrastructure projects, cutting services, and fighting to keep firefighters and police on the streets, this couldn’t be a worse time to expand the scope of the MS4 program.

Because the current MS4 program is very complex, we ask that any revisions to the program be crafted into a simplified, workable, and effective program that is user friendly, cost effective, flexible, and technically feasible. We also ask for an exemption for local governments that do not contribute to stormwater pollution problems. Because the elimination of water pollution is a long-term process limited by economic and social costs, a reasonable relationship between costs and benefits should be a key consideration toward reaching the goal of improved water quality throughout the country.

b. Establishing a numeric standard for stormwater

As outlined in the consultation document, one of the options outlined for new development and redevelopment is to “establish specific numeric standards that ensure compliance with the requirement.” We ask you to define what is meant by “specific numeric standards.” We caution against establishing numeric limits for stormwater because meeting such standards is not technically feasible. We ask for clarification that what is actually meant here is a numeric “surrogate,” such as flow volume. If that is the case, we would be able to tailor our remarks specifically to that definition.
c. Requiring municipal retrofits
We again urge EPA to consider the cost burden to local governments in complying with a stormwater retrofit requirement, as it is almost always significantly more expensive than implementing appropriate stormwater measures during new construction or redevelopment. It is the local government, and ultimately the individual residents, that must shoulder this cost burden through user fees and other taxes. If this requirement moves forward, we strongly recommend that full funding accompany this mandate.

d. Imposing Low Impact Development and green infrastructure requirements
As demonstrated in the consultation document, many states, counties and cities are already successfully employing Low Impact Development (LID) and green infrastructure principles to reduce the amount of stormwater runoff. These states and local governments are on the forefront of LID development and choose to use these techniques with varying success. Adding an LID mandate to all local government NPDES plans, would simply add a regulatory burden. Instead, we urge you to offer regional, state and local flexibility to this rulemaking to accommodate those areas where there is already a successful stormwater reduction program.

Finally, we would like to offer some general considerations as you consider revisions to the stormwater program. Any new regulations should allow for local flexibility to account for local conditions, rather than a “one-size-fit-all” regulatory approach. It is difficult to craft federal regulations for water without considering regional differences, such as condition of the watershed, water availability, climate, topography, geology, etc., along with the economical factors in the region. Moreover, there could be a wide range of these types of differences within one state or region.

In closing, know that the nation’s cities, towns, counties and municipal governments continue to support the goals of the Clean Water Act. Accordingly, we urge EPA to continue to research the best ways to improve stormwater runoff, while at the same time resisting doing harm to local governments by imposing unfunded mandates.

Thank you for the opportunity to comment. We applaud the EPA for their dedication to environmental protection and look forward to the opportunity to participate further in this rulemaking process. If you have any questions, please do not hesitate to contact us.

Sincerely,

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