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STATE OF MICHIGAN
DEPARTMENT OF ENVIRONMENTAL QUALITY
SOUTHEAST MICHIGAN DISTRICT OFFICE



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DIRECTOR

TO: All Combined Sewer Overflow Permittees in Michigan

FROM: Dan Beauchamp, Combined Sewer Overflow/Sanitary Sewer Overflow Program Specialist, Water Resources Division *DB*

DATE: April 3, 2018

SUBJECT: New Federal Rule for Combined Sewer Overflow Discharges

The United States Environmental Protection Agency (USEPA) has finalized a new rule (Attachment 1) to implement Section 425 of the Consolidated Appropriations Act of 2016, which requires all Great Lakes states, including Michigan, to develop public notification requirements for combined sewer overflow (CSO) discharges. The requirements address signage, notification of public health departments and other potentially affected public entities, notification to the public, and annual notice. As you know, Michigan has had a state-required public notification program for nearly 20 years. Many of the current state requirements are similar to the new federal requirements, and the Michigan Department of Environmental Quality (MDEQ) has worked with a USEPA-led rule development work group to ensure that much of the current state notification program efforts would meet the requirements of the federal rule. This letter serves to notify affected Michigan combined sewer system communities of the new federal requirements, along with some initial guidance regarding how Michigan plans to meet these requirements.

The federal rule requires that the public notification provisions be incorporated into National Pollutant Discharge Elimination System (NPDES) permits, which authorize CSO discharges (both untreated and treated) to the Great Lakes Basin when such permits are issued or reissued after February 7, 2018. However, some requirements of the rule need to be met as early as August 7, 2018, so this notification explains actions that CSO permittees need to take in order to be in compliance with the federal rule. As NPDES permits authorizing CSO discharges in Michigan are reissued, boilerplate language will be added to the permits.

The following summarizes actions that need to be taken by Michigan CSO permittees, per the federal reporting rule. Where appropriate, guidance is provided to CSO permittees regarding each requirement.

- On or before August 7, 2018, each permittee authorized to discharge CSO to the Great Lakes Basin must submit a public notification plan. The public notification plan describes how the permittee will ensure that the public receives adequate notification of CSO occurrences and impacts. Detailed public notification plan requirements are included in Sections 122.38(c) and (d) of Attachment 1.

Guidance: The public notification rule requires that permittees seek input on the public notification plan from the local health department and any potentially affected public entities and Indian Tribes whose waters may be impacted by a CSO discharge (see Section 122.38(d) of Attachment 1). It is highly recommended that this process begin

immediately to ensure adequate time for input from the local health department and any potentially affected downstream entities so that final public notification plans can be submitted prior to the August 7, 2018, deadline.

- On or before November 7, 2018, each permittee authorized to discharge CSO to the Great Lakes Basin must provide public notification of CSO discharges in accordance with the federal rule and the approved public notification plan. Public notification includes providing signage at each CSO discharge point and potentially impacted public access areas that are identified in the public notification plan described above. It also includes notifying the local public health department and other potentially affected public entities of a CSO discharge as soon as possible but no later than four (4) hours after becoming aware by monitoring, modeling, or other means. Detailed requirements regarding public notification are included in Section 122.38(a) of Attachment 1.

Guidance: It is the MDEQ's intention that signage requirements for discharges from approved retention treatment basins (RTB) may be handled differently than those for untreated CSO discharges. For RTBs, it is likely that placement of appropriate signage at the RTB discharge point would suffice, as approved RTB discharges are either presumed (presumption approach) or demonstrated (demonstration approach) to meet Michigan water quality standards at times of discharge. Therefore, for discharges from approved RTBs, there would likely be no signage necessary at downstream public access areas. As required by the public notification plan, proposed or existing signage locations shall be identified in the plan. Regarding public notification of discharges, the MDEQ is currently working to include discharge notifications into the MiWaters system. The intention is to have this available to permittees prior to November 7, 2018. Should the discharge reporting be available to permittees in MiWaters at that time, the intention is that this reporting system would meet the requirements of Section 122.38(a)(3), Notification of the Public, of Attachment 1. Should there be a delay in the ability for MiWaters to include discharge reporting before November 7, 2018, the permittee may need to provide notification to the public via text, email, or social media alerts to subscribers; or by posting a notice on its public access web site, per the rule. As required by the public notification plan, the notification to the local public health department, other potentially affected public entities, and the public shall be addressed in the plan. Additionally, please note that in accordance with state law (Section 3112a of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended), permittees will continue to be responsible for notifying a local media outlet when discharges occur.

- Starting February 7, 2019, by May 1 of each calendar year (or an alternative date specified by the MDEQ director), any permittees authorized to discharge a CSO to the Great Lakes Basin shall make available to the public an annual notice describing the CSO discharges from its discharge point(s) that occurred in the previous calendar year and shall provide the MDEQ director and the USEPA with notice of how the annual notice is available. Detailed requirements regarding the annual notice are included in Section 122.38(b) of Attachment 1.

Guidance: The MDEQ will continue to publish its "Combined Sewer Overflow, Sanitary Sewer Overflow, and Retention Treatment Basin Discharge Annual Report" (Annual Report) for Michigan. The USEPA has agreed that the MDEQ annual CSO/SSO report will meet the annual notice requirement for Michigan CSO permittees. Michigan CSO permittees will merely need to continue to report CSO discharges to the MDEQ, per state and (now) federal notification requirements, and the MDEQ will publish its Annual Report. Prior to May 1 of each year, Michigan CSO permittees will need to provide a link on their web site to the MDEQ's Annual Report, along with the permittee's contact information. Additionally, the permittee will need to email the USEPA with notice that provides a link to the Annual Report on the permittee's web site (per the rule, email notices should be sent to NPDES_CS0@epa.gov).

If you have any questions about this new federal rule, please contact me at 586-208-5107; beauchampd@michigan.gov; or MDEQ, Southeast Michigan District Office, 27700 Donald Court, Warren, Michigan 48092-2793.

Attachment