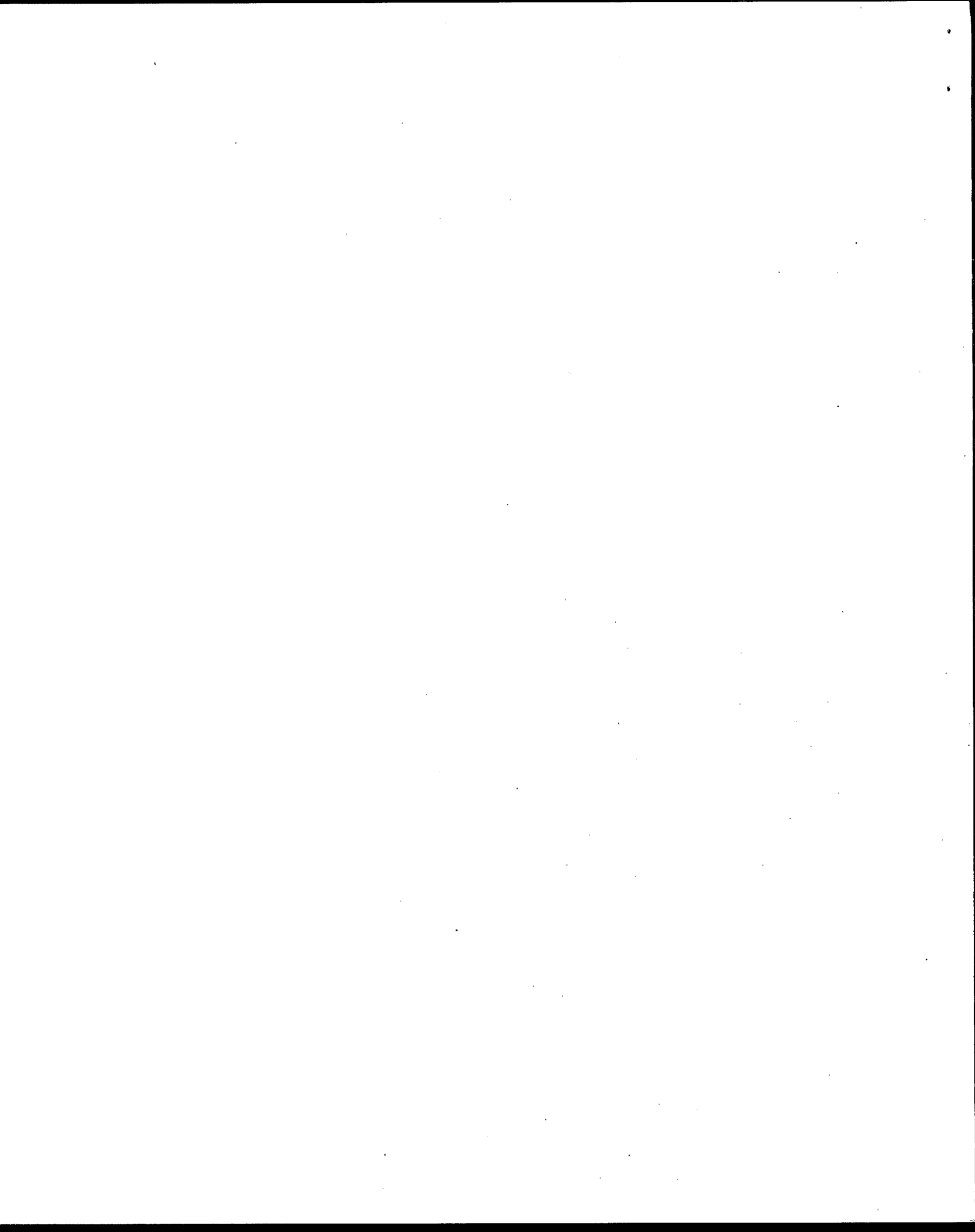




***SUMMARY OF PARTICIPANTS' COMMENTS  
AT THE  
EPA-WEF EXPERTS WORKSHOP ON  
IMPLEMENTING THE WQ-BASED PROVISIONS  
IN THE CSO CONTROL POLICY***

***HELD ON SEPTEMBER 24, 1999***



# SUMMARY

## INTRODUCTION

The Conference Committee on the U.S. Environmental Protection Agency's FY 1999 Appropriations urged the Agency to develop guidance and provide financial and technical assistance to States and Regional Offices to facilitate water quality and designated use reviews for CSO-receiving waters. EPA held three listening sessions and numerous conference calls to obtain the perspectives from a broad range of Federal, State, and local constituencies on impediments to implementing the water quality-based provisions of the CSO Control Policy and the actions EPA should take to overcome the impediments.

We prepared a *Summary of the Listening Sessions -- Observations & Recommendations For Guidance And Technical Assistance To Facilitate Water Quality And Designated Use Reviews For CSO-Receiving Waters* and preliminary guidance materials to facilitate implementation of the water quality-based provisions of the CSO Control Policy. The U.S. Environmental Protection Agency (EPA) and the Water Environment Federation (WEF) co-sponsored an invited experts workshop on September 24, 1999 to critically review these materials. Workshop participants included a facilitator and 15 knowledgeable individuals with a variety of backgrounds and experiences involving CSO control planning and implementation and water quality standards (Attachment 1 includes the list of participants).

In co-sponsoring the Workshop, the Agency sought and received a wide range of diverse perspectives on (1) the impediments to implementing the water quality-based provisions of the CSO Control Policy, including State review of water quality standards on CSO-receiving waters, and (2) the actions EPA should take to overcome these impediments. The facilitator did not ask participants to reach consensus on recommendations or provide advice as a group. We appreciated the participants' many valuable suggestions that the Agency will take into consideration as the Agency prepares appropriate draft guidance for public review and comment in April, 2000.

Participant comments are summarized below for your information. **These comments are those of Workshop participants; they do not necessarily represent the Agency's perspective.** In addition, EPA has not evaluated the merits or feasibility of proceeding with long-term recommendations.



# **1. WHAT ARE THE IMPEDIMENTS TO IMPLEMENTING THE WATER QUALITY-BASED PROVISIONS OF THE CSO CONTROL POLICY, INCLUDING STATE REVIEW OF WATER QUALITY STANDARDS ON CSO-RECEIVING WATERS?**

## **OBSTACLES IMPEDING STATES AND COMMUNITIES**

- The Agency maintains an unrealistic presumption that even in urban areas, all waters can meet the “fishable/swimmable” goals of the Clean Water Act and requires too rigorous analyses to overcome that presumption.
- State resource shortfalls preclude water quality standards reviews for every CSO receiving water.
- Many communities can not afford the high cost of CSO controls and are already burdened with increased debt because of the close-out of the Agency’s grant programs.
- CSO communities are not collecting adequate ambient water quality monitoring data to support a State water quality standards review on CSO-receiving waters.
- CSO communities have insufficient resources to collect the monitoring data and conduct the analyses on which to base use attainability analyses.
- States are paralyzed by the fear that any changes to water quality standards will be viewed unfavorably by the public.

## **CONFLICTING EXPECTATIONS**

- EPA sends “mixed messages” on whether revisions to uses for CSO-receiving waters are by exception, or the norm, and if the norm, the level of demonstration required in a use attainability analysis.
- CSO communities expect that water quality standards will be revised prior to implementing the long-term control plan. However, States do not necessarily believe that their water quality goals should be revised without a demonstration that the CSO controls, when implemented, alone or in combination with other controls, will continue to cause or contribute to the impairment of water quality standards.
- A guiding principle of the CSO Control Policy is that States will review and revise their water quality standards while communities are developing their long-term control plans. This principle is perceived by some States as conflicting with the Clean Water Act objective to restore water quality and with the water quality standards program regulatory requirements to demonstrate that with the CSO controls, uses can not be attained.
- Some communities believe that no additional controls are necessary beyond the the “presumptive approach” (4-6 overflows, 85% capture is presumed to meet water quality standards), irrespective of the water quality standards for the CSO-receiving water.

## **IMPEDIMENTS INHERENT IN EPA’S POLICY/GUIDANCE**

- The CSO Control Policy objective -- “to achieve cost-effective CSO controls that ultimately meet appropriate health and environmental objectives” – is vague and subject to different interpretations.
- The CSO Control Policy fails to provide the regulatory certainty that communities need in developing and financing their long-term control plans.

- No Agency guidance clearly integrates the long-term control plan development and implementation processes with water quality standards reviews, particularly the use of the long-term control plan data and analyses as a basis of a use attainability analysis.
- When conducting the widespread economic and social impact analyses to revise a use, the Agency's economic guidance for the water quality standards is perceived to preclude consideration of a cost-benefit analysis. If a community can "afford" additional controls, these controls must be applied, even if the incremental costs of the additional controls may far exceed any tangible environmental benefits of the controls.
- Variances would enable a valid permit to be issued requiring implementation of some controls. However, this mechanism is not used because of the high procedural hurdles, e.g., a use attainability analysis.
- Guidance is not available on adopting water quality standards and issuing permits on a watershed basis.
- Without further guidance on the use of the watershed approach, the Agency will continue to impede its use because of the perception that communities will use a watershed approach or a future TMDL to delay any implementation of CSO controls.
- Different time frames and requirements in NPDES program regulations and policies inhibit the coordination of wet weather permits on a watershed basis and the analysis and equitable allocation of load reductions among all sources of contamination.
- Permit limits continue to be developed based on "dry weather" flows rather than on flows reflective of wet weather flows, e.g., continuous simulation, dynamic or episodic event modeling.
- EPA has failed to provide the leadership and guidance necessary to ensure States revise their standards on CSO-receiving waters.
- EPA has not developed a mechanism to track State reviews of water quality standards on CSO-receiving waters and hold States accountable for the reviews.

#### INSUFFICIENT PUBLIC SUPPORT

- Use of "buzz words," such as the "water quality-based provisions" of the CSO Control Policy, are not universally understood to mean water quality standards and lead to misinterpretation and confusion by public officials and the public.
- Local communities and the public do not understand the complexities of the water quality standards program processes.
- The public does not support clean water infrastructure funding to the same extent as they support highway funding.
- The Agency has not fully described the benefits of CSO controls, including the benefits to downstream communities when overflows are stopped.
- Community organizations have not been effectively used as a public liaison mechanism during the development of CSO long-term control plans and review of water quality standards.

## **2. WHAT ACTIONS SHOULD EPA TAKE TO SUPPORT STATES IN THEIR REVIEW OF WATER QUALITY STANDARDS ON CSO-RECEIVING WATERS?**

### **DEVELOP A STATEMENT OF EPA'S EXPECTATION ON THE IMPLEMENTATION OF THE WATER QUALITY-BASED PROVISIONS OF THE CSO CONTROL POLICY**

- Develop an advocacy statement for use with local governmental officials and the public on EPA's expectations for the implementation of the water quality-base provisions of the CSO Control Policy, stressing the benefits of CSO controls.
- Prepare an "Expectations Statement" focusing on why communities need to develop CSO long-term control plans that meet the requirements of the CWA.
- Clearly state the costs of CSO controls and the benefits of controlling CSOs.
- Strongly recommend that States review water quality standards on CSO receiving waters.
- Support States who have revised their water quality standards use classification systems to account for uncontrollable overflows beyond the capacity of a well designed and operated systems to control e.g., Massachusetts and Maine.
- Hold States accountable for the review their standards on CSO-receiving waters, recognizing that standards need to be "corrected" so that they can be attained.
- Develop a problem statement addressing the impracticality for many communities to attain water quality goals.

### **IMPROVE THE COORDINATION AND COOPERATION AMONG ALL PARTIES IN THE CSO CONTROL DEVELOPMENT AND IMPLEMENTATION PROCESSES**

- Clarify responsibilities and expectations for State NPDES and water quality standards authorities, communities, community constituencies and EPA in ensuring the appropriate individuals participate in the CSO and water quality standards processes.
- Assure all State and EPA programs (permits, water quality standards, enforcement) are involved with communities in the development and implementation of CSO long-term control plans.
- Target EPA intervention in CSO long-term control plan development and implementation to working with States on an overall approach and process, and on inter-state and inter-jurisdictional issues.
- Unless there is a pre-existing enforcement action, keep the CSO coordination under the purview of the permitting authority, making sure Federal and State water quality standards and permitting personnel participate, as needed.
- Approach communities as valued clients, trusting their judgment and providing timely reviews of their drafts and responses to their questions.
- Advocate a greater level of coordination between State and Regional Offices. Offer to provide technical support if States or communities need EPA's support before State legislative committees.
- Promote greater involvement of technically capable watershed organizations in the coordination of CSO long-term control plan development and implementation processes.
- Actively advocate reducing the litigious atmosphere by involving third parties in the CSO long-term control plan development and implementation processes.

- Develop a forum for bringing States together to share approaches for addressing water quality standards during wet weather events.

## EXPAND EPA'S GUIDANCE

### Watershed Approach

- Provide guidance, with case examples, on developing water quality standards, CSO long-term control plans and permits on a watershed basis.
- Provide guidance and case examples of using the watershed approach in the planning and implementation of CSO long-term control plan, along with SSO, storm water and nonpoint source controls.
- Provide examples of mechanisms for community-based organizations to use in communicating/cooperating on CSO activities on interstate watersheds rather than having to deal with States, individually.
- Recommend approaches for addressing upstream nonpoint source loadings that are not controlled through a permit.
- Coordinate the CSO and TMDL processes by making CSO impacted waters a high TMDL priority.
- Explain how episodic wet weather events can be translated into a daily load as part of a TMDL and how a wet weather TMDL can be applied to a permit without wet weather water quality standards.

### State Accountability For Water Quality Standards Review

- Develop a tracking mechanism for State review of water quality standards on CSO-receiving waters.
- Provide clear processes to carry out water quality standards reviews with the expectation that if the processes are followed, EPA will approve the revisions.
- Provide processes, guidance and oversight to "correct" water quality standards for wet weather events.

### Use Designations

- Provide guidance and case examples of State water quality standards classification systems that address limited/intermittent exceedances beyond the capacity of well designed and operated systems to control.

### Use Attainability Analyses

- Eliminate the need for use attainability analyses or allow less rigorous analyses when issuing variances, in conjunction with the phased implementation of obvious CSO projects.
- Develop a pre-packaged/simplified use attainability analysis framework for revising uses, based on seasonal and event specific events.
- Provide guidance on the type of use attainability analysis needed to apply a revised use classification system on a water body-specific basis.
- Identify the appropriate factors to examine when conducting a use attainability analysis for recreation.



- Provide examples of “tiered use attainability analyses,” depending on stream size, number of overflows, population, etc.
- Provide clear processes that States may follow in revising uses and allowing limited exceedances of water quality standards.
- Expand the economic guidance to discuss use revisions when there are no tangible environmental benefits of a community spending to the limit of what has been determined to be the level that a community can afford.
- Define widespread social impact in the analysis of substantial and widespread social and economic impact.

#### Long-Term Control Plan Development and Implementation and Water Quality Standards Review Processes

- Provide a clear, “plain English” description of the process linking the CSO control development and implementation processes with the water quality standards review processes.
- Provide case examples of using the data collected and the analyses conducted during the CSO control development process for a use attainability analysis.

#### CSO

- Provide a status report on CSO community long-term control plan development and implementation, showing how any remaining overflows are handled in the water quality standards, permitting, or enforcement processes.
- Clearly state the circumstances under which the “presumptive approach” may be used as the end point for CSO controls.
- Advocate phasing early implementation of CSO long-term control plan priority projects, along with monitoring during each phase to evaluate progress made.
- Evaluate the efficacy of CSO control technologies for bacteria, nutrients, and toxic pollutants.
- Develop guidance and case examples for use by small communities in developing their long-term control plans, consistent with water quality standards.
- Provide examples of innovative, less expensive structural controls.
- Provide examples of which CSO controls do not work, as well as those which do work.
- Provide guidance for third party citizen participation in data collection on CSO-receiving waters.
- Provide guidance on developing water quality-based effluent limits, based on a CSO long-term control plan.



## ATTACHMENT 1

### EPA-WEF INVITED EXPERTS WORKSHOP PARTICIPANTS

PAUL FREEDMAN, President  
Limno-Tech, Inc.  
Facilitator

SALLY BETHEA  
Upper Chattahoochee River Keeper

THOMAS BRUECKNER  
The Narragansett Bay Commission

TIM HENRY, Associate Director  
Water Division  
U.S. EPA, Region V

RALPH GOODNO,  
Merrimack River Watershed Council

GLENN HAAS, Director  
Division of Watershed Management  
Massachusetts Department of Environmental Protection

VYTO KAUNELIS  
Chief Deputy Director  
Wayne County Department of the Environment

PAUL MOLINARI  
Senior Water Policy Advisor  
U.S. EPA, Region II

JOHN MURPHY  
Assistant City Engineer  
Bangor, ME

LINDA MURPHY, Director  
Office of Ecosystem Protection  
U.S. EPA, Region I

LARRY SILVERMAN  
Environmental Consultant

Tacoma Park, MD  
TIMOTHY P. STRANKO  
General Counsel  
Morgantown Utility Board

CLAUDIO TERNIEDEN  
Chief, Water Policy Section  
Office of Water Management  
Indiana Dept. of Environmental Management

ALAN H. VICORY, JR., P.E., DEE,  
Executive Director  
Ohio River Valley Water Sanitation Commission

EDWARD WAGNER  
CH2M Hill

CLYDE WILBER  
Greeley and Hansen



