

## Appendix C: GASB 34

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# GASB 34: Spotlight on Assets

*Abstract:* Governmental Accounting Standards Board Statement 34 (GASB 34) has been called the most sweeping and significant change in public sector financial reporting in history. It has been estimated that it will affect 84,000 agencies.

For the first time, all non-federal government agencies will be required to report the value of their assets, and to calculate and report depreciation on those assets as an operating expense.

For agencies in the infrastructure business, changes may be even more significant. These agencies are offered the opportunity (and "encouraged") to report on their assets in detail, to implement comprehensive asset management systems, to assess the physical condition of their assets on a periodic basis, and to report on programs and costs to maintain and renew their infrastructure assets to specified and objective levels.

Compliance may be difficult and expensive. Nevertheless, many infrastructure agencies will choose to accept GASB's encouragement to manage and maintain their assets at a higher level than ever before. This decision will be driven by many factors, not the least of which is the prospect of maintaining or improving bond ratings.

This paper discusses the provisions of GASB 34 that relate to asset management, and the reasons that infrastructure agencies may choose GASB 34's rigorous "Modified Approach" to asset reporting. It also shows the schedule for required GASB 34 compliance.

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B R O W N   A N D  
C A L D W E L L

# GASB 34: Spotlight on Assets

## EXECUTIVE SUMMARY

**A note to the reader:** *GASB 34 is a complex and comprehensive set of rules for reporting the financial results of the operations of governments and governmental agencies. This brief paper summarizes those portions of GASB 34 that concern fixed asset and infrastructure accounting. These topics will be of great interest to top utility managers, policy makers, and financial and engineering managers. Much of GASB 34 addresses specific reporting formats and other matters concerning accounting and presentation of multiple funds; this paper does not address these latter areas.*

### WHAT IS GASB?

The Governmental Accounting Standards Board (GASB) was established in 1984 to set accounting and reporting standards for state and local governments. Its mission is to improve reporting standards in order to provide useful information for citizens, financial analysts, legislative bodies, creditors, underwriters, and other users of government financial reports.

### WHAT IS STATEMENT 34?

GASB Statement 34, issued in June of 1999, specifies the economic resources measurement focus and the accrual basis of accounting for all governmental financial reporting.

### HOW WILL GASB STATEMENT 34 AFFECT MY AGENCY?

When the Statement goes into effect, all government financial reports will be required to include a standardized accounting of assets, liabilities, revenues, expenses, profits, and losses by major fund. If your organization is a small piece of a larger one—for instance, a department of a city—you will have to comply along with your reporting parent. *GASB 34, in effect, mandates that comprehensive asset management processes must be in place at all levels of government.*

Depending on how you choose to comply, your financial statements and your bond ratings may be affected.

### WHAT SPECIFICALLY DOES GASB STATEMENT 34 REQUIRE?

1. It specifies the reporting of all capital assets at historical cost and requires accounting for depreciation expense as a cost of providing services.
2. It likewise requires and defines the specific reporting of all infrastructure assets.

The effect these rules will have on your municipality or agency will vary with the complexity of your facility mix and the level of asset management already established. At a minimum the following will be necessary:

- Each state and local government must have and maintain a **complete and thorough inventory of all capital and infrastructure assets, their years of acquisition, and their original procurement costs**. These assets will be reported in the financial statements with their values reduced by depreciation.
- If you elect not to depreciate your infrastructure facilities, you must have an Asset Management System meeting certain requirements. **This system must report the costs of a program to maintain your assets at a condition level that you specify, supported by actual condition assessments at least every three years**. The costs of the program, including asset replacement costs, are then expensed each year, substituting for depreciation.

### WHAT DO I DO NOW?

Brown and Caldwell sees GASB 34 as an excellent opportunity for public utilities and other agencies not only to perform a comprehensive inventory and valuation of their assets, but also to improve overall asset management practices and to better manage system costs.

A GASB 34-compliant asset management system can support and integrate with other valuable systems such as capital asset acquisition planning, work order processing, refurbishment and replacement scheduling, systems operations and maintenance management, and procurement process analysis. These are all areas where proper planning for GASB 34 compliance can result in significant cost savings later and an overall improvement in utility management systems.

# GASB 34: Spotlight on Assets

## GASB MISSION AND PRINCIPLES

### THE ROLE OF GASB

GASB accomplishes its mission by issuing standards to improve the usefulness, relevance, understandability, and reliability of financial reports. These standards, to which all government agencies must adhere, are the products of years of investigation and analysis and become part of generally accepted accounting principles.

Although not a regulatory agency, GASB fulfills a vital civic function since, without standards, financial reporting would become meaningless. GASB is tasked with the following mission:

1. To issue standards to improve the usefulness of financial reports.
2. To keep standards current with the governmental environment.
3. To provide guidance on implementing standards.
4. To improve reporting by establishing meaningful standards.
5. To improve the common citizen's understanding of financial reports.

Presently, local and state laws require governments and governmental agencies to provide information about the funds they control, and most funds have restrictions on the uses of their assets. Annual and other periodic financial reports provide the means by which governments allow citizens to hold their governments accountable. These reports are not consistent, however, and sometimes the information provided is confusing and can even be unintentionally misleading.

GASB 34 requires governments and governmental agencies to report on each fund, as is required now, but with some changes. For example, only "major" funds will be reported individually, with less-important funds reported in the aggregate.

The implementation of GASB 34 will mean that the general public can gain a greater insight into the operation of your agency. Asset accounting may also become a critical element in the rate setting and budgeting process.

### NOTE:

Properly accounting for and managing assets is a primary goal of GASB 34's provisions. *Even if your agency contracts out the operation or maintenance of its assets, it still must report these assets per the provisions of GASB 34.*

# GASB 34: Spotlight on Assets

## FINANCIAL REPORT CONTENT

### GASB 34 STANDARD ACCOUNTING

The thrust of GASB 34 is the requirement for the preparation and submission of standardized financial and budgetary reports by state and local governments. The reports you produce will present all government-wide financial and asset activity identified by major fund. The GASB 34 definition of a major fund is any one whose revenue, expenditures, assets, and liabilities constitute at least 10% of the total for the government funds and 5% of the aggregate government operation. Your new reports will include:

### ASSET REPORTING

1. **Total Assets of the Government**—You must distinguish between capital and other assets. This requires a total and reproducible valuation of all assets of the organization. *The process begins with a thorough inventory of all facilities and may require extensive research into the historical cost of procurement and refurbishment.* Valuation at current replacement value and deflation to the year placed in service is allowed if methodologies to do so are sound.
2. **Total Net Assets**—You must distinguish capital assets (net of related debt and depreciation), between restricted amounts (tied to specific funds), and unrestricted amounts.
3. **Change in Net Assets**—You must calculate the yearly changes in the net assets of the agency.
4. **Ending Net Assets**—You must provide a yearly final valuation of net assets.

### MANDATORY MANAGEMENT DISCUSSION AND ANALYSIS

Another aspect of GASB 34 that will affect agencies is the Management Discussion and Analysis—referred to as MDA. The new financial reports require clear explanation. MDA provides an introduction to the Financial Statements and an objective analytical overview of the financial activities of the government. The analysis must be based on known facts and should explain your management decisions or specific and unusual circumstances. *You will need to address the differences in financial condition between the current and past year, and should explain all significant capital asset activity, as well as changes in credit ratings and any debt limitations that may affect your agency.*

### REQUIRED SUPPLEMENTAL INFORMATION

GASB 34 also specifies that Required Supplemental Information (RSI) be included with your new reports. RSI includes budgetary comparisons for each major fund. You must also provide information on infrastructure asset valuation or reporting.

If your agency chooses to use the "Modified Approach" for reporting infrastructure (see page 5), the supporting analysis must be included in the RSI. Even if you choose depreciation reporting, you are still encouraged to include information on the condition of your infrastructure assets and programs to maintain their condition in your RSI. For further discussion, see *Infrastructure Assets (The "Modified Approach")*, on page 5.

# GASB 34: Spotlight on Assets

## GENERAL CAPITAL ASSETS (THE "DEPRECIATION APPROACH")

### HOW DO I TREAT CAPITAL ASSETS?

GASB 34 defines capital assets as including all land (with improvements), easements, buildings (with improvements), vehicles, equipment, machinery, works of art, historical treasures, infrastructure, and all other tangible assets used in the operation of the government. These assets must also have a useful life extending beyond a single reporting period.

### THE DEPRECIATION APPROACH

GASB 34 requires that capital assets be reported using the "Depreciation Approach" over their useful lives unless they are inexhaustible (such as land) or are defined as part of the infrastructure. *Capital assets are valued at total historical cost including all ancillary charges. You must report capital assets in the financial statements as net of depreciation.*

GASB 34 prefers that depreciation be calculated by allotting the net historical cost of the asset over the useful life of the asset "in a systematic and rational manner." Depreciation can be calculated for:

1. A class of assets (improved paving).
2. A network of assets (roads)
3. A subsystem of a network (highways, secondary streets, etc.).
4. By individual asset (power plant).

Useful lives for the various asset classes are not defined by GASB 34. Estimating useful lives is the responsibility of the reporting agency or government.

### PROBLEMS WITH DEPRECIATION

GASB recognizes that simply reporting depreciation based on historical costs may present a distorted picture of financial results, and thus offers the "Modified Approach" discussed on the next page. Typical problems with depreciation reporting include:

- Because of inflation, annual depreciation charges on older assets may be much less than the amount that should be accrued each year to fund replacement.
- A utility with considerable deferred maintenance may show a low depreciation charge, understating its "true cost" of doing business when substantial future catch-up costs are considered.
- Regardless of the amount of the charge, depreciation remains a "bookkeeping entry." Its inclusion in financial statements is not an indication that an agency is investing in its infrastructure or reserving funds to do so.

### NOTES:

- Inexhaustible assets such as land are not depreciated.
- Your agency must disclose the methods used to capitalize assets and to estimate the useful lives of facilities.
- If complete historical costs are not available, you can estimate these costs by calculating the present replacement costs of assets and deflating them to their acquisition years using appropriate indices.
- Agencies may also use composite depreciation methods by classifying assets according to similar or matching categories (*i.e.*, roads, bridges, pipelines, etc.)
- Agencies using depreciation "shortcuts" should be aware of the possibility that their auditors will include this information in footnotes to the financial statements, perhaps reflecting unfavorably on the agencies' asset management programs and capabilities.

# GASB 34: Spotlight on Assets

## INFRASTRUCTURE ASSETS (THE "MODIFIED APPROACH")

### WHAT IS INFRASTRUCTURE?

GASB 34 defines infrastructure assets as capital assets that are:

1. Normally stationary in nature.
2. Can be preserved for a significant number of years.
3. Normally part of a network or system (roads, pipelines, water or sewage systems, telecommunications systems, power plants, etc.)

### THERE ARE SPECIAL PROVISIONS FOR INFRASTRUCTURE REPORTING

GASB 34 considers infrastructure assets to be differentiated from general capital assets because many are used for an extremely long term, and with renovations and upgrades, the lives of infrastructure facilities or assets can be extended—in some cases indefinitely. Consequently, depreciation calculations can be difficult and inaccurate. However, the value of these assets often constitutes a significant portion of the total value of your agency or even of your parent government.

### THE MODIFIED APPROACH

Many government agencies may therefore elect to treat infrastructure assets differently from other capital assets, whose costs will generally be recognized using the "Depreciation Approach." GASB 34 calls this alternative to depreciation the "Modified Approach."

*The Modified Approach allows agencies to report annual expenses incurred to maintain the condition of their infrastructure assets, and to carry these assets on their books for as long as the assets retain their usefulness. GASB 34 allows and even encourages this approach for infrastructure assets, but only under certain specific conditions.*

### A MANDATORY ASSET MANAGEMENT SYSTEM

1. Your agency must have an Asset Management System in place.
2. The Asset Management System must include an accurate and up-to-date inventory of all assets.
3. The Asset Management System should clearly report the costs to maintain the assets to a level of readiness you specify (see notes below).
4. Documentation should exist to establish and verify each level of classification and how condition assessment results are arrived at.
5. Complete condition assessments should be performed every three years.
6. The assessments should be replicable.
7. The condition level determination process should be established by administrative or executive policy or legislative action.
8. The results should clearly show that assets are maintained in a reasonable fashion to meet the operational standards and condition levels required by your agency's policy.

### NOTES:

- Cyclical assessments (e.g., assessments of a third of all facilities each year) are allowed.
- If your agency does not have three years of reporting data available at the time of implementation, as many assessments as have been performed can be included.
- You must fully define the methods and procedures used. You must also define the condition level at which you plan to maintain your assets, the asset condition scale, the methods of assessment, etc. *GASB 34 does not specify the condition level at which you must maintain your assets.*
- In general, GASB 34 gives little useful guidance as to what constitutes an "acceptable" asset condition scale, or the procedures you should use to assess your assets' condition.



# GASB 34: Spotlight on Assets

## ANALYSIS—WHICH APPROACH SHOULD I CHOOSE?

### THE EASIEST MAY NOT BE THE BEST

Many agencies will choose the Depreciation Approach for financial reporting. Of the two approaches, it is certainly the simplest and does not require a periodic assessment of asset condition.

However, there are good reasons for infrastructure agencies to consider the Modified Approach to GASB 34 compliance. Some of these reasons are:

- Many agencies may want, or perhaps need, a sound condition assessment program. Such a program could support master planning, capital scheduling, and other important programs.
- The Modified Approach gives users of financial statements the most complete and comprehensive picture of an agency's financial situation, particularly as it concerns likely future capital needs for asset replacement and refurbishment. Some agencies may want to communicate this information, either to highlight their excellent condition or to point out the need for increased investment in infrastructure.
- Most infrastructure agencies badly need an effective asset management system to serve management needs across several key areas. Adoption of the Modified Approach supports development of such a system. With foresight, the system can be developed to serve not only GASB 34 compliance, but needs in other areas as well.
- Even if the depreciation approach is used, GASB encourages infrastructure agencies to report Modified Approach information in the RSI (Required Supplemental Information). Users of financial statements, including bond rating agencies, may see the lack of Modified Approach information as a signal that the agency is unwilling or unable to disclose the condition of its assets. This message may reflect unfavorably on the agency.

### HOW DO I CHOOSE MY APPROACH?

Your GASB 34 compliance approach, and the details of compliance, should be developed considering *all potential compliance goals* and the needs of *all potential users* of compliance systems.

Potential compliance goals may include:

- Minimize the cost and effort involved in compliance.
- Minimize immediate rate impacts (or, alternatively, better justify adequate rates).
- Encourage financial policies that will support adequate infrastructure investment, even in lean times.
- Communicate the most accurate picture of the agency's financial condition.
- Maintain or improve bond ratings.
- Realistically assess the condition of infrastructure assets, and establish a program to repeat the assessment in the future.
- Through good asset information, better support master planning, replacement planning, maintenance management, and other common infrastructure agency needs.

Many infrastructure agencies, in defining and reviewing their GASB 34 compliance goals, will realize three important things:

1. Selection of a GASB 34 compliance approach is a *strategic decision* for an infrastructure agency.
2. The Modified Approach, even if only for informational use in the RSI, best serves not only financial needs (primarily through more accurate reporting and possibly better bond ratings), but also important needs in Engineering, Planning, Operations, and other areas.
3. To maximize the value of the Modified Approach to the agency, compliance should not be a matter for Finance alone. *Engineering, Operations, and others should be involved* in compliance planning and in selecting the compliance approach.

# GASB 34: Spotlight on Assets

## IMPLEMENTATION SCHEDULE

### IMPLEMENTATION IN THREE PHASES

GASB 34 is implemented in three phases based on total revenues of the responsible governmental entity in the first fiscal year ending after 15 June 1999. *If you are a business activity or sub-unit of a government, the date of your required compliance is tied to the annual revenues of the agency (for instance, city) of which you are a part.*

Prospective asset reporting is required and retroactive asset reporting is encouraged at the effective dates of implementation, which are set as follows:

- **Phase 1**—Governments with annual revenue of \$100 million or more: First fiscal year beginning after 15 June 2001.
- **Phase 2**—Governments with annual revenue between \$10 and \$100 million: First fiscal year beginning after 15 June 2002.

**NOTE:** For Phase 1 and 2 governments, retroactive asset reporting (for general capital assets and improvements acquired after fiscal year 1980) is required four years after the effective date of the regulations. *If your agency manages proprietary fund assets or is a special-purpose government engaged in business-type activities, this grace period for retroactive reporting of assets does not apply.*

- **Phase 3**—Governments with annual revenue less than \$10 million: First fiscal year beginning after 15 June 2003.

**NOTE:** For Phase 3 governments, retroactive asset reporting for general capital assets is encouraged but is not required at this time.

A simplified way of looking at this process is shown below:

Annual Revenues of Consolidated Reporting Entity	Prospective reporting of All Capital Assets required starting in fiscal year beginning on or after	Retroactive reporting of Infrastructure Assets required starting in fiscal year beginning on or after	Retroactive reporting of General Capital Assets required starting in fiscal year beginning on or after
\$100 million or more	June 15, 2001	June 15, 2001	June 15, 2005
\$10 - \$100 million	June 15, 2002	June 15, 2002	June 15, 2006
Less than \$10 million	June 15, 2003	June 15, 2003	Not required

### NOTES:

- Remember that there is no grace period for retroactive reporting of infrastructure assets for agencies engaged in "business-type" activities. If you are a utility, chances are that you will need to have all your fixed asset information developed by the initial implementation date.
- These are very tight schedules, particularly for the major municipalities and states, whose asset listings can run to tens or hundreds of thousands of items. If the information is not already available, each item must be identified and inventoried; researched to determine date procured and historical cost; designated as a capital or infrastructure asset; and depreciated using a consistent and rational standard or maintained using an Asset Management System that meets GASB 34 requirements.

# GASB 34: Spotlight on Assets

## CONCLUSIONS AND RECOMMENDATIONS

### COMPLIANCE WILL NOT BE EASY

GASB 34 provides a significant challenge to states and local governments. Budgets are tight and resources are limited. *Apparent costs of operations, and perhaps rate levels and revenues, will depend far more than previously on the ways in which assets are reported.*

Based on the significant requirements of the Statement, it is reasonable to assume that few agencies now have asset management systems in place that meet GASB 34 guidelines. However, similar existing resources can be identified, analyzed, and modified as needed:

- The Federal Government has a historical system called the Annual Inspection Summary (AIS) that is used to identify deficiencies in its capital assets, and to generate funding requests through Congress.
- Brown and Caldwell and other engineering consulting firms have developed various asset management systems, although these have usually been built to serve specific client needs and have not normally taken GASB 34 requirements into account.
- Many public utilities and agencies purchased or developed maintenance management systems. Again, these were generally designed without consideration of GASB 34. Furthermore, these systems usually concentrate on "pure maintenance," as opposed to capital, activities, and will not properly deal with GASB 34-type activities such as asset replacement or major refurbishment.

It is clear that a lot of work remains to be done to meet the challenges posed by GASB 34. The reporting process is not yet fully defined, and the solutions still require development. Solutions will vary depending on each agency's needs. *But even with all the uncertainties present, agencies will have to meet their reporting deadlines.*

When those deadlines arrive, and it will be best to have asset management and accounting systems in place that will not have to be materially modified afterwards, particularly as such modification may lead to the need to restate prior period financial results—never a good thing.

### A STRATEGIC APPROACH TO GASB 34 COMPLIANCE

How best to proceed? Every agency will have options available to meet GASB 34 requirements, and this means that they will have decisions to make. *We recommend that infrastructure agencies approach the GASB 34 question strategically: How should your agency or utility best comply with GASB 34 given the potential costs and all your other goals?*

Specific goals may include:

- Maintaining or improving bond ratings.
- Minimizing GASB 34's effects on rates.
- Maintaining infrastructure assets for long-term viability.
- Creating an asset database that will serve not only financial but also planning, engineering, and operational needs.
- Using GASB 34 compliance as a springboard for other asset-based systems such as master planning, GIS implementation, maintenance management, replacement planning, work order processing, and service call enhancement.

If approached in this fashion, *GASB 34 compliance may turn out to be a significant opportunity for infrastructure agencies rather than merely a troublesome challenge.*

## Attachment B

### PART 122--EPA ADMINISTERED PERMIT PROGRAMS; THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:  
Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.
2. Add § 122.38 to subpart B to read as follows:

- § 122.38 **Municipal Satellite Collection Systems** (applicable to State programs, see § 123.25)
- (a) NPDES Jurisdiction. (1) A permit must establish, at a minimum, standard permit conditions at 40 CFR 122.41 and 122.42, which apply to municipal satellite collection systems that convey municipal sewage or industrial waste to a POTW treatment facility, which in turn discharges pursuant to an NPDES permit.
  - (2) The Director of the NPDES authority must either:
    - (i) Issue a permit to the owner or operator of the municipal satellite collection system that requires the implementation of standard permit conditions throughout the municipal satellite collection system; or
    - (ii) Where the operator of the POTW treatment facility has adequate legal authority, issue a permit to the operator of the POTW treatment facility which receives wastewater from the municipal satellite collection system that requires implementation of the standard permit conditions throughout the municipal satellite collection system.
  - (b) Definition of Municipal Satellite Collection System.  
Municipal Satellite Collection System means any device or system that meets each of the following criteria:
    - (1) Is owned or operated by a "State" or "municipality" as these two terms are defined at § 122.2;
    - (2) Is used to convey municipal sewage or industrial waste to a POTW treatment facility that has an NPDES permit or is required to apply for a permit under § 122.21(a); and
    - (3) The owner or operator is not the owner or operator of the POTW treatment facility that has an NPDES permit or has applied for an NPDES permit.

(c) Permit Applications. (1) Which Owners or Operators of Municipal Satellite Collection Systems Must Submit an NPDES Permit Application?

- (i) All owners or operators of a municipal satellite collection system must submit an NPDES permit application unless the NPDES permit for the POTW treatment facility that receives wastewater from the municipal satellite collection system includes NPDES permit conditions that apply within the municipal satellite collection system.
- (ii) Where the NPDES permit for the municipal collection system that receives wastewater from the municipal satellite collection system requires the implementation of permit conditions throughout the municipal satellite collection system, the Director may require the owner or operator of the municipal satellite collection system to submit a permit application on a case-by-case basis.

(2) What are the Deadlines for Submitting Applications? Where an owner or operator of a municipal satellite collection system must submit an application under paragraph (c) (1) of this section, the application must be submitted by the following dates:

- (i) If on [date 2 years from publication of final rule], a permit application for the treatment facility that receives flows from the municipal satellite collection system has been submitted to the NPDES authority and is currently pending, the owner or operator of the municipal satellite collection system must submit a permit application by [date 3 years from date of publication of final rule];
- (ii) If on [date 2 years from publication of final rule], a permit application for the treatment facility that receives flows from a municipal satellite collection system is not pending, then the owner or operator of the municipal satellite collection system must submit a permit application by the date that the treatment facility is required to submit its next permit application;
- (iii) Where a municipal satellite collection system that does not have NPDES permit coverage experiences a sanitary sewer overflow that discharges to waters of the United States, the owner or operator of the

municipal satellite collection system must submit a permit application within 180 days of the discharge; and

(iv) Where the Director requires the owner or operator of the municipal satellite collection system to submit a permit application on a case-by-case basis, the owner or operator of the municipal satellite collection system must submit a permit application within 180 days of notification by the Director, unless the Director grants permission for a later date (except the Director shall not grant permission for a submission later than the expiration date of the existing permit).

(3) Application requirements. Any owner or operator or proposed owner or operator of a municipal sanitary sewer collection system that is required to submit an application under paragraph (c) (1) of this section must submit the information required under § 122.21(j) on a Form 2A except for the following regulatory provisions: §122.21(j) (1) (viii) (B), (1) (viii) (C), (1) (viii) (E), (2) (ii), (2) (iii), (3) (iii), (4), (5), (6) and (7).

3. Section 122.41 is amended by adding a phrase to paragraph (d), adding a phrase to paragraph (e), adding a phrase to paragraph (1) (6), and revising paragraph (1) (7), as follows: revising paragraph (1) (6) by adding a phrase to the beginning of the paragraph, by revising paragraph (1) (7) to read as follows:

**§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25)**

\* \* \* \* \*

(d) Duty to mitigate. Except for sanitary sewer overflows addressed in § 122.42(e), \* \* \*

(e) Proper operation and maintenance. Except for municipal sanitary sewer collection systems addressed in § 122.42(e),

\* \* \*

\* \* \* \* \*

(1) \* \* \*

(6) Twenty-four hour reporting. (i) Except for overflows from municipal sanitary sewer collection systems addressed in §122.42(g), \* \* \*

(7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs

(1)(4), (5), and (6) of this section and for municipal sanitary sewer collection systems, § 122.42(g), at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.

\* \* \* \* \*

4. Section 122.42 is amended by adding paragraphs (e), (f) and (g) to read as follows:

§ 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see § 123.25)

\* \* \* \* \*

(e) **Municipal Sanitary Sewer Systems - Capacity, Management, Operation and Maintenance Programs.** (1) General Standards.

You, the permittee, must:

- (i) Properly manage, operate and maintain, at all times, all parts of the collection system that you own or over which you have operational control;
- (ii) Provide adequate capacity to convey base flows and peak flows for all parts of the collection system you own or over which you have operational control;
- (iii) Take all feasible steps to stop, and mitigate the impact of, sanitary sewer overflows in portions of the collection system you own or over which you have operational control;
- (iv) Provide notification to parties with a reasonable potential for exposure to pollutants associated with the overflow event; and
- (v) Develop a written summary of your CMOM program and make it, and the audit under paragraph (e)(2)(ix) of this section, available to any member of the public upon request.

(2) Components of CMOM Program. You must develop and implement a capacity, management, operation and maintenance (CMOM) program to comply with paragraph (e)(1) of this section. If you believe that any element of this section is not appropriate or applicable for your CMOM program, your program does not need to address it, but your written summary must explain why that element is not applicable. The Director will consider the quality of the CMOM program, its implementation and effectiveness in any relevant enforcement action, including but not limited to any enforcement action for violation of the prohibition of any

municipal sanitary sewer system discharges described at paragraph (f) of this section. The program must include the following components, with the exception of non-applicable components as discussed above:

- (i) Goals. You must specifically identify the major goals of your CMOM program, consistent with the general standards identified above.
- (ii) Organization. You must identify:
  - (A) Administrative and maintenance positions responsible for implementing measures in your CMOM program, including lines of authority by organization chart or similar document; and
  - (B) The chain of communication for reporting SSOs under paragraph (g) of this section from receipt of a complaint or other information to the person responsible for reporting to the NPDES authority, or where necessary, the public.
- (iii) Legal Authority. You must include legal authority, through sewer use ordinances, service agreements or other legally binding documents, to:
  - (A) Control infiltration and connections from inflow sources;
  - (B) Require that sewers and connections be properly designed and constructed;
  - (C) Ensure proper installation, testing, and inspection of new and rehabilitated sewers (such as new or rehabilitated collector sewers and new or rehabilitated service laterals);
  - (D) Address flows from municipal satellite collection systems; and
  - (E) Implement the general and specific prohibitions of the national pretreatment program that you are subject to under 40 CFR 403.5.
- (iv) Measures and Activities. Your CMOM program must address the following elements that are appropriate and applicable to your system and identify the person or position in your organization responsible for each element:
  - (A) Provide adequate maintenance facilities and equipment;
  - (B) Maintenance of a map of the collection system;
  - (C) Management of information and use of timely, relevant information to establish and prioritize



- appropriate CMOM activities (such as the immediate elimination of dry weather overflows or overflows into sensitive waters such as public drinking water supplies and their source waters, swimming beaches and waters where swimming occurs, shellfish beds, designated Outstanding National Resource Waters, National Marine Sanctuaries, waters within Federal, State, or local parks, and water containing threatened or endangered species or their habitat), and identify and illustrate trends in overflows, such as frequency and volume;
- (D) Routine preventive operation and maintenance activities;
  - (E) A program to assess the current capacity of the collection system and treatment facilities which you own or over which you have operational control;
  - (F) Identification and prioritization of structural deficiencies and identification and implementation of short-term and long-term rehabilitation actions to address each deficiency;
  - (G) Appropriate training on a regular basis; and
  - (H) Equipment and replacement parts inventories including identification of critical replacement parts.
- (v) Design and Performance Provisions. You must establish:
- (A) Requirements and standards for the installation of new sewers, pumps and other appurtenances; and rehabilitation and repair projects; and
  - (B) Procedures and specifications for inspecting and testing the installation of new sewers, pumps, and other appurtenances and for rehabilitation and repair projects.
- (vi) Monitoring, Measurement, and Program Modifications.  
You must:
- (A) Monitor the implementation and, where appropriate, measure the effectiveness of each element of your CMOM program;
  - (B) Update program elements as appropriate based on monitoring or performance evaluations; and

- (C) Modify the summary of your CMOM program as appropriate to keep it updated and accurate.
- (vii) Overflow Emergency Response Plan. You must develop and implement an overflow emergency response plan that identifies measures to protect public health and the environment . The plan must include mechanisms to:
  - (A) Ensure that you are made aware of all overflows (to the greatest extent possible);
  - (B) Ensure that overflows (including those that do not discharge to waters of the U.S.) are appropriately responded to, including ensuring that reports of overflows are immediately dispatched to appropriate personnel for investigation and appropriate response;
  - (C) Ensure appropriate immediate notification to the public, health agencies, other impacted entities (e.g., water suppliers) and the NPDES authority pursuant to paragraph (g) of this section. The CMOM program should identify the public health and other officials who will receive immediate notification;
  - (D) Ensure that appropriate personnel are aware of and follow the plan and are appropriately trained; and
  - (E) Provide emergency operations.
- (viii) System Evaluation and Capacity Assurance Plan. You must prepare and implement a plan for system evaluation and capacity assurance if peak flow conditions are contributing to an SSO discharge or to noncompliance at a treatment plant unless you have already taken steps to correct the hydraulic deficiency or the discharge meets the criteria of paragraph (f) (2) of this section. At a minimum the plan must include:
  - (A) Evaluation. Steps to evaluate those portions of the collection system which you own or over which you have operational control which are experiencing or contributing to an SSO discharge caused by hydraulic deficiency or to noncompliance at a treatment plant. The evaluation must provide estimates of peak flows (including flows from SSOs that escape from the

system) associated with conditions similar to those causing overflow events, provide estimates of the capacity of key system components, identify hydraulic deficiencies (including components of the system with limiting capacity) and identify the major sources that contribute to the peak flows associated with overflow events.

(B) Capacity Enhancement Measures. Establish short- and long-term actions to address each hydraulic deficiency including prioritization, alternatives analysis, and a schedule.

(C) Plan Updates. The plan must be updated to describe any significant change in proposed actions and/or implementation schedule. The plan must also be updated to reflect available information on the performance of measures that have been implemented.

(ix) CMOM Program Audits. As part of the NPDES permit application, you must conduct an audit, appropriate to the size of the system and the number of overflows, and submit a report of such audit, evaluating your CMOM and its compliance with this subsection, including its deficiencies and steps to respond to them.

(3) Communications. - The permittee should communicate on a regular basis with interested parties on the implementation and performance of its CMOM program. The communication system should allow interested parties to provide input to the permittee as the CMOM program is developed and implemented.

(4) Small Collection Systems. - The Director of the NPDES authority may make the following modifications when establishing the CMOM program permit condition for:

(i) Municipal sanitary sewer collection systems with an average daily flow of 1.0 million gallons per day or less, the CMOM permit provision may omit the following paragraphs: (e) (2) (iii) (A) through (E); (e) (2) (iv) (A), and (e) (2) (iv) (C) through (H) of this section. In addition, the requirements in paragraph (e) (2) (v) of this section may be modified for municipalities that are not expected to have significant new installations of sewers, pumps and other appurtenances.

(ii) Municipal sanitary sewer collection systems with an average daily flow of 2.5 million gallons per day or less, the requirement to develop a written summary of the permittee's CMOM plan ((e)(1)(v)) and the requirement to conduct an audit and prepare a written audit report ((e)(2)(ix)) may be omitted unless triggered by the occurrence of an SSO that discharges to waters of the United States from the permittee's collection system during the term of the permit.

- (f) **Municipal Sanitary Sewer Systems B Prohibition of Discharges.** (1) General Prohibition. Municipal sanitary sewer system discharges to waters of the United States that occur prior to a publicly owned treatment works (POTW) treatment facility are prohibited. The term POTW treatment facility means an apparatus or device designed to treat flows to comply with effluent limitations based on secondary treatment regulations or more stringent water quality-based requirements. Neither the bypass or the upset provisions at §(m) and (n), respectively, apply to these discharges.
- (2) Discharges Caused by Severe Natural Conditions. - The Director may take enforcement action against the permittee for a prohibited municipal sanitary sewer system discharge caused by natural conditions unless the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:
- (i) The discharge was caused by severe natural conditions (such as hurricanes, tornados, widespread flooding, earthquakes, tsunamis, and other similar natural conditions);
  - (ii) There were no feasible alternatives to the discharge, such as the use of auxiliary treatment facilities, retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, or an increase in the capacity of the system. This provision is not satisfied if, in the exercise of reasonable engineering judgment, the permittee should have installed auxiliary or additional collection system components, wastewater retention or treatment facilities, adequate back-up equipment or should have reduced inflow and infiltration; and

- (iii) The permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meets the conditions of this provision.
- (3) Discharges Caused by Other Factors. - For discharges prohibited by paragraph (f) (1) of this section, other than those covered under paragraph (f) (2) of this section, the permittee may establish an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:
  - (i) The permittee can identify the cause of the discharge event;
  - (ii) The discharge was exceptional, unintentional, temporary and caused by factors beyond the reasonable control of the permittee;
  - (iii) The discharge could not have been prevented by the exercise of reasonable control, such as proper management, operation and maintenance; adequate treatment facilities or collection system facilities or components (e.g., adequately enlarging treatment or collection facilities to accommodate growth or adequately controlling and preventing infiltration and inflow); preventive maintenance; or installation of adequate backup equipment;
  - (iv) The permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meets the conditions of this provision; and
  - (v) The permittee took all reasonable steps to stop, and mitigate the impact of, the discharge as soon as possible.
- (4) Burden of Proof. In any enforcement proceeding, the permittee has the burden of proof to establish that the criteria in this section have been met.
- (g) Municipal Sanitary Sewer Systems - Reporting, Public Notification and Recordkeeping. This condition establishes recordkeeping, reporting and public notification requirements for your municipal sanitary sewer system and sanitary sewer overflows from your municipal sanitary sewer system. You do not have to report sanitary sewer overflows under § 122.41(1) if the sanitary sewer overflows are reported under this section.

(1) Definition of Sanitary Sewer Overflow. A sanitary sewer overflow (SSO) is an overflow, spill, release, or diversion of wastewater from a sanitary sewer system. SSOs do not include combined sewer overflows (CSOs) or other discharges from the combined portions of a combined sewer system. SSOs include:

- (i) Overflows or releases of wastewater that reach waters of the United States;
- (ii) Overflows or releases of wastewater that do not reach waters of the United States; and
- (iii) Wastewater backups into buildings that are caused by blockages or flow conditions in a sanitary sewer other than a building lateral. Wastewater backups into buildings caused by a blockage or other malfunction of a building lateral that is privately owned is not an SSO.

(2) Immediate Notifications and Follow-Up Reports. You must provide the following additional reports for sanitary sewer overflows (including overflows that do not reach waters of the United States) that may imminently and substantially endanger human health:

- (i) You must immediately notify the public, health agencies and other affected entities (e.g., public water systems) of overflows that may imminently and substantially endanger human health. The notification should be in accordance with your CMOM overflow emergency response plan (see paragraph (e)(2)(vii) of this section);
- (ii) You must provide to the NPDES authority either an oral or electronic report as soon as practicable within 24 hours of the time you become aware of the overflow. The report must identify the location, estimated volume and receiving water, if any, of the overflow; and
- (iii) You must provide to the NPDES authority within 5 days of the time you become aware of the overflow a written report that contains:
  - (A) The location of the overflow;
  - (B) The receiving water (if there is one);
  - (C) An estimate of the volume of the overflow;
  - (D) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
  - (E) The estimated date and time when the overflow began and stopped or will be stopped;

- (F) The cause or suspected cause of the overflow;
- (G) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the overflow and a schedule of major milestones for those steps; and
- (H) Steps taken or planned to mitigate the impact(s) of the overflow and a schedule of major milestones for those steps.

(iv) The Director may waive the written report required by paragraph (g) (2) (iii) of this section 122.42(g) (2) (iii) on a case-by-case basis.

(3) Discharge Monitoring Reports. You must report sanitary sewer overflows that discharge to waters of the United States on the discharge monitoring report (DMR), including the following information:

- (i) The total number of system overflows that discharge to waters of the United States that occurred during the reporting period;
- (ii) The number of locations at which sanitary sewer overflows that discharge to waters of the United States occurred during the reporting period that resulted from flows exceeding the capacity of the collection system;
- (iii) The number of sanitary sewer overflows that discharge to waters of the United States that are unrelated to the capacity of the collection system that occurred during the reporting period; and
- (iv) The number of locations at which sanitary sewer overflows that discharge to waters of the United States that occurred during the reporting period that are unrelated to the capacity of the collection system.

(4) Annual Report. (i) You must prepare an annual report of all overflows in the sewer system, including overflows that do not discharge to waters of the United States. The annual report must include the date, the location of the overflow, any potentially affected receiving water, and the estimated volume of the overflow. The annual report may summarize information regarding overflows of less than approximately 1,000 gallons. You must provide the report to the Director and provide adequate notice to the public of the availability of the report.

- (ii) Systems serving fewer than 10,000 people are not required to prepare an annual report if all DMRs for the preceding 12 months show no discharge to waters of the United States from overflows.
- (5) Recordkeeping. You, the permittee, must maintain a record of the following information for a period of at least 3 years from the date of the overflow or other recorded event:
- (i) For each sanitary sewer overflow, including overflows that did not discharge to waters of the United States, which occurred in your collection system or as a result of conditions in a portion of the collection system which you own or over which you have operational control:
    - (A) The location of the overflow and the receiving water if any;
    - (B) An estimate of the volume of the overflow;
    - (C) A description of the sewer system component from which the release occurred (e.g., manhole, constructed overflow pipe, crack in pipe);
    - (D) The estimated date and time when the overflow began and when it stopped;
    - (E) The cause or suspected cause of the overflow; and
    - (F) Steps that have been and will be taken to prevent the overflow from recurring and a schedule for those steps.
  - (ii) Work orders which are associated with investigation of system problems related to sanitary sewer overflows;
  - (iii) A list and description of complaints from customers or others; and
  - (iv) Documentation of performance and implementation measures.
- (6) Additional Public Notification. You must notify the public of overflows, including overflows that do not discharge to waters of the United States, in areas where an overflow has a potential to affect human health. The criteria for notification should be developed in consultation with potentially affected entities. The notification should be in accordance with your CMOM overflow emergency response plan (see paragraph (e) (2) (vii) of this section.).

**PART 123 B STATE PROGRAM REQUIREMENTS**

1. The authority citation for part 123 continues to read as follows:



**Authority:** The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Amend § 123.25 by renumbering paragraphs (a) (39) through (a) (45) to (a) (12) through (a) (18), renumbering paragraphs (a) (12) through (a) (38) as (a) (20) through (a) (46), and adding a new paragraph (a) (19) to read as follows:

**§ 123.25 Requirements for permitting.**

(a) \* \* \*

(19) § 122.38 B (Municipal Satellite Collection Systems).

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