

Attachment B

GW&PCA COMMENTS ON EPA'S PROPOSED TMDL REGULATIONS OFFSETS FOR WASTEWATER DISCHARGE EXPANSIONS

Background

Many of our urban centers around the country have reported, through CWA Section 303(d)(1) listing requirements, impairments to waterbodies caused by both point and nonpoint sources of pollutants. Approximately one-half of the Country's listed waters are in this category. The situation is the same in Georgia especially in the watersheds around Atlanta. This rapidly expanding metropolitan area, located at the headwaters of several river basins is facing growth pressures from both water quantity and quality perspectives.

The Georgia EPD's calibrated dynamic model of the Chattahoochee River, which supplies drinking water to over 3 million people, predicts that current permitted POTW's and area runoff will cause a violation of water quality standards for dissolved oxygen. The water quality impairments are attributable to oxygen demanding and temperature loads from wet weather runoff as well as currently permitted POTW levels.

The Georgia EPD already requires a process for all water and wastewater facilities to initiate watershed assessments and implement Water Resource Protection Plans as a requirement to obtain a NPDES permit modification for plant expansion. Requirements for these Water Resource Protection Plans originate from the CWA Section 122.4 Prohibitions, for restrictions on discharges to impaired waters. The requirements encompass the basic elements as the proposed TMDL Implementation Plans in that they require legal authority to implement necessary watershed controls, monitor effectiveness and enforce the attainment of water quality standards. However the schedule for implementation of the current Georgia requirements will be driven by the need for growth through sewer moratoriums as opposed to other scheduling factors as may be allowed under the proposed TMDL Implementation Plan or through offsets allowed under its companion rule.

Proposed Companion Rule

The companion rule of the TMDL program adds requirements to NPDES (Part 122) and anti-degradation (Section 131.12) programs allowing offsets for wastewater discharge expansions and is the process EPA has proposed to address the FACA recommendations regarding waivers to restrictions on wastewater facility expansions in impaired waterbodies until the TMDL is established. EPA believes that creating the offset requirement would provide a valuable mechanism for ensuring reasonable progress during this interim period toward attaining water quality standards; would establish markets in pollutant trading; and would seek innovation and achieve environmental benefits in the most cost-effective manner.

With simplifications as delineated herein, the offset concept as proposed in the companion rule could be an improvement to the Georgia program by first quantifying "reasonable program progress" (as delineated in the current Georgia NPDES permits) and then by providing a flexible process to implement and measure watershed controls and restoration projects. GW&PCA maintains that the offset provisions will be the major driving mechanism to accomplish wet weather controls in urban watersheds and will result in early water quality successes in the TMDL program, especially for interactive multiple watersheds with overlapping jurisdictions as in Atlanta. The GW&PCA also maintains the offset process can be improved and simplified by modifications to the proposed rule elements delineated as follows:

1. Section 122.4(j)(2)(i) & (ii) require offset load reductions to be from the same waterbody as the discharge requiring expansion. In the Atlanta example, where multiple watersheds with overlapping jurisdictions and utilities are interactively contributing to water quality impairments to several river basin headwaters (several waterbodies), this requirement would impede the implementation of trading markets that the rule is intended to promote. GW&PCA maintains that a flexible approach would allow a jurisdiction or multiple jurisdictions or regional authority to implement inter-watershed banking systems along governmental or authority boundaries in conjunction with smart development and sustainable urban restoration programs. This would allow a cost-effective and immediate development of obvious drainage system control mechanisms that are available in the same and/or nearby watersheds (as opposed to the same waterbody requirement). Where entire metropolitan areas with multiple jurisdictions and utilities exist and interactively contribute to water quality impairments such flexibility must be allowed if early cost-effective successes are to be achieved.
2. Section 122.4(j)(2)(i) and Section 131.12(a)(ii) require the "offset" pollutant(s) to be the "same" as that for the new or existing discharger undergoing significant expansion and for which the waterbody is impaired. Specifically, EPA requests comment on allowing discretion of the Director to offset a discharge of one pollutant with a load reduction of a different pollutant for which the water body is also impaired. GW&PCA strongly maintains and urges EPA that this discretion must be allowed, and in fact surrogate parameters be promoted, if reasonable further progress toward attaining water quality standards is to be achieved in a cost-effective and measurable manner. EPA is concerned over the technical difficulty of determining an appropriate offset of a different pollutant. GW&PCA maintains that urban watershed controls will reduce multiple pollutant loads of which certain constituents may be the impaired water parameters. GW&PCA also maintains that wetlands and riparian restoration projects will improve aquatic habitat in a diverse manner as opposed to specific parameters or species. Measurability of watershed controls and restoration projects and reasonable progress of attaining water quality standards will require surrogate parameter monitoring based upon currently available technologies and simplification for implementation. Wet weather watershed monitoring for progress trends will require continuous measurements to determine dry and wet weather quality

conditions and to calculate wet weather improvements, aquatic life improvements or load reductions. Continuous measurements using surrogate parameters must also be coupled with periodic analytical samples of impairment constituents and aquatic biology surveys to provide correlations for calculation of load reduction or watershed restoration progress.

3. Section 122.4 (j) (2) (iv) requires offset load reductions (times a 1.5 factor) to be achieved prior to commencing the new or expanded discharge. However the Director has the discretion to allow implementation of offset load reductions over a longer time frame that goes beyond the commencement date of the new or expanded discharge as long as the offset requirements are set at twice the increased wastewater load. The expanded time frame must be accompanied by an enforceable schedule with milestones delineated in the dischargers permit and would not be permitted in instances in which the TMDL is scheduled to be established before the offset is fully realized. EPA specifically invites comments on allowing exceptions to require the load reductions on or before the increased discharge commencement date and if so, prohibiting a timetable that would overlap with a TMDL establishment date. In the Atlanta case, the federal court has required EPA (delegated to EPD) to establish TMDL's for the majority of Atlanta (Chattahoochee River Basin) by 2002 (under the current TMDL regulations). The GW&PCA maintains that under the proposed TMDL rules and current consent schedules, Atlanta would not be able to take advantage of the offset concept and would face certain sewer moratoriums with little direction as to how to achieve reasonable progress until TMDL's are established. The GW&PCA also maintains that the current schedule and magnitude of activities required for the establishment of the TMDL's is impractical and will not likely be accomplished on time or will not be performed in accordance with sound science or with meaningful results. Therefore, the position of the GW&PCA is that EPA should allow schedules to implement offsets beyond the discharge commencement date and to allow overlap beyond the scheduled TMDL establishment date, especially where watershed controls will likely be required under TMDL allocations as well as to be used to justify offsets for point source facility expansions. The GW&PCA also maintains that factors for offsets in this regard should be allowed on a 1:1 relationship if a pound for pound or habitat for habitat result can be demonstrated.

A recent news briefing has quoted EPA Office of Water Management, in light of a flood of comments on the proposed TMDL rule, to denote that the agency is evaluating and considering simplified options for compliance with the proposed offset requirements. In this article, examples of attaining the objectives of further reasonable progress in the watershed might include wetland and riparian restoration projects and monitoring systems to measure and evaluate the implementation of the TMDL program. These types of examples are consistent with approaches being considered and accepted by the Georgia EPD and are an underlying goal of the Governor's greenways program. The monitoring system example is a first step and key element for the collection of sound science data from which TMDL decisions can be made and reasonable further watershed

progress can be measured. These examples suggest a rational sequence towards meeting the goals of the TMDL implementation plan as well as providing simplified offset concepts.

In summary, the GW&PCA recommends that the offset rules be simplified to allow: 1) an inter-watershed banking approach for systems where regional controls and watershed restoration will likely be required, 2) surrogate parameter options for performance and progress measurement, 3) extended schedules for the implementation of offsets even beyond scheduled TMDL establishment dates, and 4) riparian and wetland restoration projects and long-term watershed monitoring systems to serve as reasonable further progress for compliance with offset requirements. It is the position of the GW&PCA that these types of improvements to the proposed rules will result in implementable and early program successes in restoring water quality in our urban watersheds.