Dear Mr. Meades:

The Federation of Canadian Municipalities (FCM) and the Canadian Water and Wastewater Association (CWWA) are pleased to be engaged in this dialogue with Environment Canada on behalf of Canadian municipalities. We look forward to a successful outcome to this exchange and to the provision of greater protection for Canadian waters.

Please find below the compilation of the key municipal concerns regarding the technical elements of the draft regulation on Wastewater System Effluent. The purpose of this document is to highlight key elements of concern in several main areas and to provide, in order of preference from the municipal perspective, recommendations to resolve these issues. We acknowledge that several of the points have already been presented to your office, particularly with regard to liability and combined sewer overflows, and that you have provided feedback on these items. We felt however, that it was important to include these for the record.

It should also be noted that these discussion points are the result of multiple teleconference meetings with a group of twenty-four (24) municipal practitioners.

Finally, it is our position that the costs of these regulations were greatly underestimated, while the benefits were over-stated, as per our submitted cost and benefits discussion document.

Please find below our core concerns and recommendations:

1. Liability

Municipalities are concerned that they will be vulnerable to prosecution under the Fisheries Act, during the two years it will take Environment Canada to process and grant Temporary Authorizations for discharges. While Environment Canada has stated that they do not intend to pursue prosecutions during this time, utilities will still be vulnerable to private prosecutions.

We recommend that Environment Canada explicitly state their position against prosecution during the two-year time frame in the revisions to the Enforcement and Compliance document, to be released in conjunction with the Regulation in Part II of the Canada Gazette. This may give municipalities a stronger position, if a group or individual chooses to pursue a private prosecution, during that time frame.

2. Combined Sewer Overflows

We are uncertain of the interpretation of subsection 40(4) of the Act, provided by Environment Canada in late July that seems to have resulted in the inclusion of CSOs during wet weather as a “Deposit out of the Normal Course of Events” (DONCE). Consequently, under the current draft regulation, combined sewer overflows (CSOs) are considered a DONCE and as such would be subject to immediate reporting requirements, as well as a requirement to prepare a response plan to prevent any deposit of a deleterious substance from the wastewater system into surface water.

These are not appropriate requirements given that municipal systems are designed to overflow in the event of wet weather, often under a provincial approval, in order to prevent the flooding of property and associated risks to public health. Furthermore,

these requirements do not adequately reflect the consensus developed through the CCME's Canada-Wide Strategy for the Management of Municipal Wastewater Effluents (CWS-MMWE). The Regulation should be modified to include only overflows due to mechanical failure or blockages, and combined and sanitary sewer overflows during dry weather - except during spring thaw - as a DONCE. This recommendation is aligned with the CWS-MMWE, which clearly delineates between dry and wet weather events and encourages site-specific objectives. "…*Jurisdictions may determine site-specific [CSO] objectives. The national standards for combined sewer overflows are:*

- *no increase in combined sewer overflow frequency due to development or redevelopment, unless it occurs as part of an approved combined sewer overflow management plan;*
- *no combined sewer overflow discharge during dry weather, except during spring thaw and emergencies; and*
- *removal of floatable materials where feasible*."

For DONCEs as defined above, the reporting and a response plan requirements of Section 42 are appropriate requirements. For all other designed overflows, there should be no reporting or response requirements, particularly those under section 42(b) which require a response plan that includes "a description of the measures to prevent(…)" designed CSOs. Exempting designed overflows, would be consistent with the exemption in the Regulation of industrial discharges, with less than 25% blackwater, because wet weather overflows would typically be very dilute.

The CWS-MMWE also includes timelines for planning and actions related to CSO and SSO management:

- "*Effective immediately, jurisdictions will ensure that combined sewer overflows and sanitary sewer overflows will not increase in frequency due to development, unless it occurs as part of an approved long-term management plan.*
- *Within seven years the national overflow standards for combined sewer overflows and sanitary sewer overflows must be met.*
- *Within seven years, long term plans to reduce combined sewer overflows and capture substances will be in place and based on achieving jurisdictional overflow objectives*."

Finally, communities are concerned about the requirements for public reporting of DONCEs. The purpose of these Regulations is to protect fish habitat, but also to maintain harmonization with provincial requirements. Therefore it is recommended that public notification requirements only apply if the deposit caused by a mechanical failure or blockage adversely impacts a fishery. Adequate mechanisms are already in place to advise the public if these overflows could impact human health (e.g.: beach closures).

Our Technical Committee did spend considerable time discussing alternative reporting and planning requirements that would be feasible for communities, if wet weather overflows were captured as a DONCE. While some alternatives were suggested, no consensus was reached. There were continuing concerns about the feasibility and accessibility of even basic monitoring and reporting of wet weather overflows by many Canadian communities, and that any such requirements would be contrary to the objectives established in the CWS-MMWE.

3. Total Residual Chlorine (TRC)

The testing procedures and technology to measure total chlorine residual to the standard of 0.02 mg/L is not reliable or widely accessible and is, for some municipalities, prohibitively expensive.

We understand that Environment Canada is willing to consider the presence of a dechlorination agent as proof of compliance. If this is the intention, the monitoring and testing requirements contained in the CEPA Pollution Prevention Planning requirements should be aligned with this, and communicated to provincial regulators.

If communities are not disinfecting their effluent with chlorine and therefore not dechlorinating, Environment Canada needs to confirm that these communities will generally be authorized to discharge and will be in compliance for the TRC standard.

Since TRC and levels of usage of dechlorination agents are extremely variable based on numerous factors in the treatment process, including loadings and bacteria levels, it is the view of municipalities that an individual sample is not an adequate or representative measure of compliance. For that reason, we recommend that the presence of appropriate dechlorination agent should be demonstrated through an average number of samples, which will vary based on characteristics at each discharge point.

4. Testing Environment

The suggested 100 metre mixing zone, proposed under the temporary authorization will not allow sufficient dilution and adequate mixing in some cases, depending on site specific conditions such as pluming. A 100 metre mixing zone with regard to ammonia could be highly problematic in some situations and completely inconsequential in others. It is recommended that the size of the mixing zone be determined on a site-specific basis with cooperation from the municipality and provincial regulator.

5. Environmental Effects Monitoring

The current environmental effects monitoring will capture a large number of sites, with fairly significant costs attached at each one. Municipalities are concerned that significant work will be undertaken to provide Environment Canada with large amounts of data in excess of that required to evaluate municipal wastewater impacts on the environment. Environmental Effects Monitoring requirements should be removed from the Regulation. A co-operative research consortium could be established between Environment Canada and municipalities (perhaps under the administrative leadership of CWWA) to perform Environmental Effects Monitoring on selected sites. This would best address the core purpose of the EEM requirements – to assess the impacts of secondary treatment across the country. In addition, EEM programs represent a significant additional cost, particularly to small municipalities which needs to be addressed adequately by all three orders of government. While industrial sectors regulated under the *Fisheries Act* fund their own EEM programs, the municipal sector is unique, as we have limited control over the origins of the wastewater being processed, nor are we profiting from our activities.

At a minimum, the trigger for environmental effects monitoring should be reconsidered **–** requiring such a significant dilution within 100 metres will capture a large number of utilities. Environment Canada should align these requirements with the mixing zone as suggested in our proposal under testing environment.

6. Accreditation

The concept of accreditation is valuable and municipalities recognize the importance of using an accredited lab to comply with a federal regulation. In order to allow municipalities to acquire accredited laboratory services or become accredited themselves, it is recommended that the requirement for accreditation be phased in over five years.
We also suggest that very small utilities relying on in-house testing be allowed to undergo performance testing, instead of full accreditation.

7. Authorizations

We note that there is some, albeit limited, chance that an effluent will exhibit acute lethality even while meeting the standards in subsections 4(1) (a)-(d). Municipal wastewater is a very complex medium and there might be other unforeseen issues which may arise relative to the Regulation.

It is recommended that a new type of authorization be available to deal with such unforeseen circumstances. The conditions of such an authorization need not be defined specifically in the Regulations.

8. Education

Several municipalities have had various contacts with EC regional and provincial staff in the field. Our experience is that the staff is not aware of the CCME strategy or that the WSER regulation is being prepared. They are also unable to advise municipalities as to what they should be doing to prepare themselves for the upcoming requirements (i.e. enhanced initial effluent characterization). Furthermore, although EC has an agreement with DFO staff regarding enforcement, both sets of enforcement personnel receive questions in the field and require knowledge of this initiative.

In addition, the other Federal Departments and Agencies do not seem to be aware of the CCME CWS-MMWE and its incorporation into the Draft Regulation. Recently, CWWA was informed that the Mackenzie Valley Land and Water Board (MVLWB) would not allow the City of Yellowknife to use the new proposed CCME criteria for effluent. The MVLWB is a water board created by the Department of Indian and Native Affairs Canada (INAC).

It is recommended that EC staff undertake an internal communication campaign to give their regional and field staff an appropriate heads-up on these issues. Due to potential overlap in the field, we strongly suggest that both EC and DFO staff are provided with appropriate education about the regulation, the CCME strategy and their respective responsibilities.

Finally, INAC and the MVLWB should be brought into the dialogue regarding the policy implications of the proposal regulation and implementation timetable. We suggest that EC remind all of its internal stakeholders about the intent and extent of the proposed regulation.

9. Environment's Canada's response to the July 27th meeting

We attach, again, for your reference, a copy of the summary table prepared by Environment Canada staff. We are still waiting to hear back from you on the key outstanding italicized issues (Appendix I).

Closing

We remain available to discuss these comments, at Environment Canada's convenience. As well, CWWA submitted more technical comments in our May 19, 2010 letter on the draft Regulation, and remain available to address any of those and continue this dialogue, as required.

With regards to the considerable benefits and cost implications, as expressed in the Regulatory Impact Analysis Statement (RIAS), it is important for both the Federal Government and municipalities to be satisfied with the financial underpinnings of the analysis of the impacts to infrastructure that will flow from the implementation of the Regulation. As it will take considerable time to revise the RIAS we are pleased that the Minister has agreed that the national interest in best served by getting the Regulation "right". We respectfully suggest that Environment Canada take the appropriate additional time that is needed to gather and analyze new financial data.

We look forward to seeing your changes to the Regulation. As it could be difficult to determine all of the consequences without seeing the final legal language, we would, renew our request to see the *consultation draft* Regulation, prior to submission to Treasury Board.

Yours truly,

Brock Carlton
Chief Executive Officer
Federation of Canadian Municipalities

Jennifer Jackson
Executive Director
Canadian Water and Wastewater Association

c: Luis Leigh, Director, Regulatory Analysis and Valuation Division, Strategic Policy Branch, Environment Canada
c: Hermenegilde Twagiramungu, Director, Aboriginal and Public Sectors, Environmental Stewardship Branch, Environment Canada
c: James Arnott, Manager, Wastewater, Environment Canada