



OMAG

April 9, 2024

OMAG Regional Meeting

OMAG Municipal Sanitary Sewer Initiative

"From ordinary people come extraordinary results"

The *cost* of improving and maintaining all **sanitary sewer systems of municipalities** across the State *far exceeds the revenues* available for such purpose

Prepared by CDM Smith - estimated (in 2010 dollars) that **\$43.89 billion of wastewater infrastructure improvements** throughout the State would be needed through the year 2060; and

Prepared by FirstSouthWestFinancial – estimated Wastewater Infrastructure Needs cumulative **funding capacity** through 2060 across the State to be **\$1.9 billion** for *CWSRF* and significantly less than that for *FAP*

Thereby recommending other funding structures that could perhaps be leveraged to provide additional resources

2012 OWRB Study

“Needs
grossly
outpace
revenues
available”

Comprehensive Statewide Water Plan is being updated through OWRB this coming year



Barriers and Results for Cities & Towns

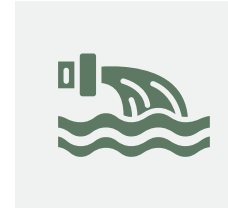
BARRIERS

- Aging Lines
- Inconsistent Maintenance Programs
- Inconsistent Repair & Replacement Programs
- Need for Technical Expertise
- Need for Staffing
- Need for Funding

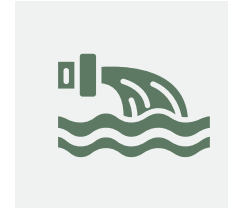
RESULTS

- Back Ups
- Illegal Discharges
- Lawsuits - Increasing judgments; Nuisance claims; Diversion of resources
- Disgruntled and Suffering Citizenry

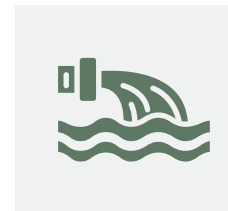
Developing The Program Goals



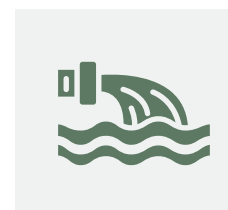
Enhance Water Quality



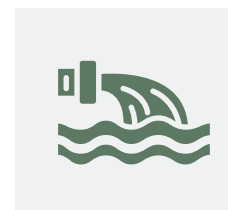
Improve quality of life of citizens in member cities and towns



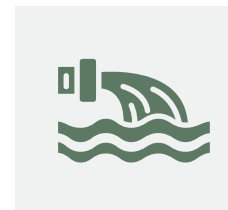
Enhance operation of the public Sanitary Sewer System



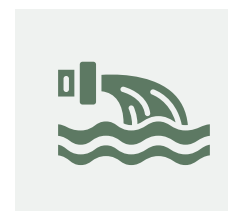
Identify areas of concern within systems that need attention or improvement



Evaluate and plan for sanitary sewer improvements



Reduce sewer clogs and backups



Reduce Sanitary Sewer overflow costs



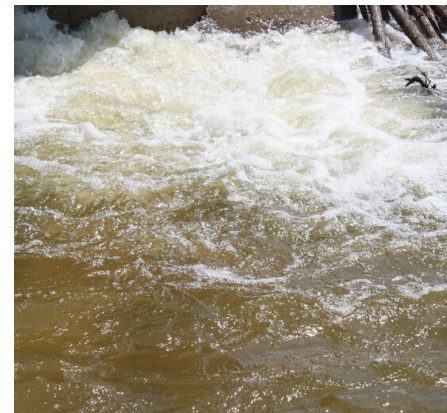
LEGAL LANDSCAPE – SSO NUISANCE CLAIMS

- Difficult to defend – almost strict liability – *Crestwood Vinyard Church v. OkC*, 2020 OK CIV APP 3
- Diverts resources away from system improvements
- Standards for operations and maintenance are critical
- Scalable standards are critical in recognition of widely varying resources and system conditions



MANAGING WITHIN THE RISK POOL & Legislatively

- Consider liability coverage caps
- Excess Judgments paid through other municipal sources including property tax roll assessments
- Explore legislative relief from nuisance claims



IMPROVED PERFORMANCE BENEFITS ALL CITIES & TOWNS IN THE RISK POOL

- IMPROVED WATER QUALITY
- DECREASED CLAIMS COSTS
- STABILIZED PREMIUMS
- SATISFIED CITIZENS

Managing the Problem

Oklahoma

Governmental Tort

Claims Act

Protections

Tort Claim Caps

Property damage - \$25,000

Average property damage claim is less than cap

Nuisance Damages - \$125,000

Truelock v. City of Del City – Okla. Sup. Ct. 1998

annoyance and inconvenience

noneconomic damages

LITIGATION TRENDS

DIFFICULT JURY ISSUES

SOLUTIONS ARE NOT
AT THE COURT HOUSE

Most jurors - not empathetic to cities
in sewer back up cases

Recent trend

\$125,000 per occupant
for example: family of 5 = \$650,000 total

Bokchito case - \$435,000

Choctaw case - \$225,000

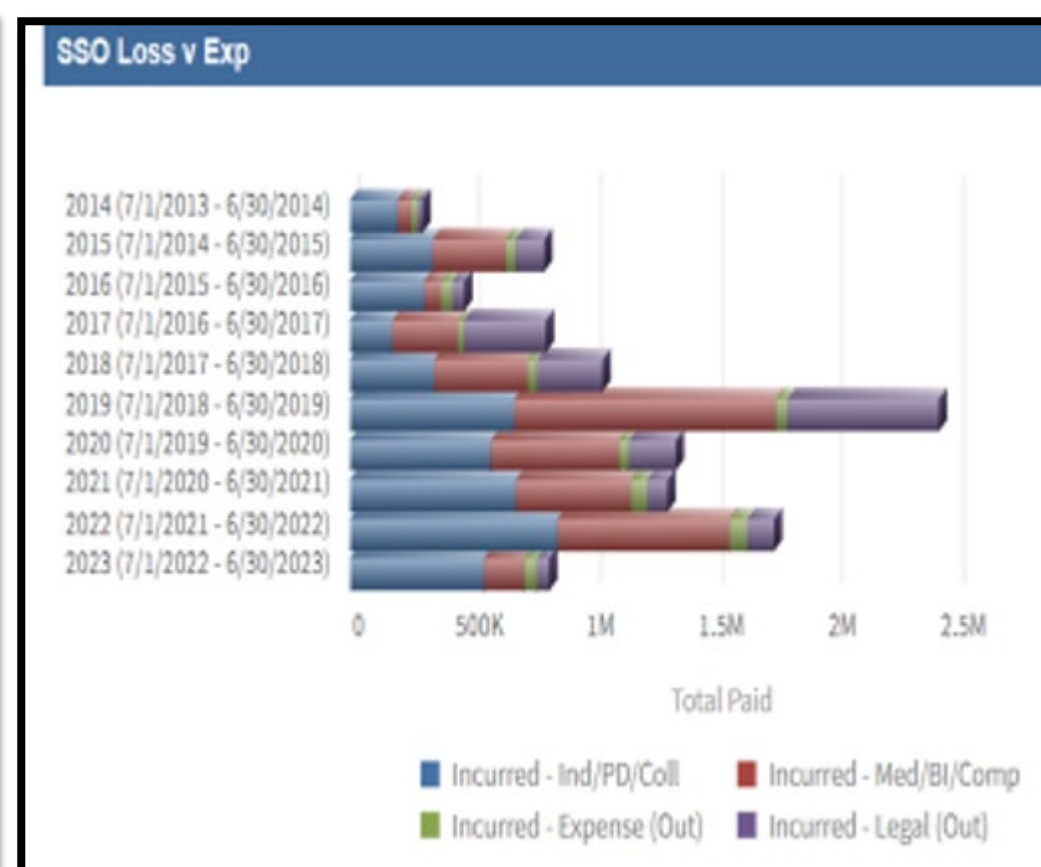
practically strict liability: *Crestwood Vinyard
Church v. OkC*, 2020 OK CIV APP 3



SANITARY SEWER CLAIMS TREND FOR LAST COUPLE OF YEARS ARE

- INCREASES IN FREQUENCY
- INCREASES IN SEVERITY
- TREND 10% + ANNUAL INCREASE
- UNSUSTAINABLE FOR RISK POOL

Rising Costs of Sanitary Sewer Overflows - OMAG Cities



SSO TRENDS



"From ordinary people come extraordinary results"



SSO TRENDS

Rising Costs of Sanitary Sewer Overflows – OMAG Cities

- **2014** sewer related costs were around **\$250,000**;
 - Ratio of PD costs to BI/PI was around 4:1
 - legal costs were not significant
- **2019** (peak) costs around **\$2.4 million**;
 - Ratio of PD cost to BI/PI was around 1:1.25;
 - legal costs were around 30%
- **2022** sewer related costs were around **\$1.75 million**;
 - Ratio of PD to BI/PI was around 1:1;
 - legal costs were close to 8.8%
- **2024** sewer related costs are estimated around **\$3.5 million**

SOLUTIONS THROUGH POOLING PRINCIPLES

CURRENT PREMIUM & DEDUCTIBLE
STRUCTURE IS NOT FEASIBLE

POOL OFFERINGS BEING IMPLEMENTED

- \$25,000 CAP ON PROPERTY CLAIMS
- \$25,000 CAP ON OTHER LOSSES

EXCESS JUDGEMENT FROM SSO CASES
PAID BY: THE CITY

- UTILITY FUNDS,
- GENERAL FUND,
- PROPERTY TAX ASSESSMENT



"From ordinary people come extraordinary results"

What are
some
other
ways to
help?



"From ordinary people come extraordinary results"

ASSISTING IN REMOVING BARRIERS

- Help Develop Maintenance Programs
- Help Develop Repair and Replacement Programs
- Assist with Technical Expertise
- Assist with Complimenting Staffing
- Assist in Developing Funding Solutions

Maintenance & Inspection



"From ordinary people come extraordinary results"

MAPPING

Assist Cities in Knowing What They Have

- GIS/ Sewer Line - Rapid Assessment Tool

PREVENTATIVE PROGRAM

- Periodic and Regular Line Flushing
- Chemical treatments - Tree roots and other natural debris
- Grinders & Screens - Flushable wipes
- Fats, Oils, and Greases (FOG)- programs to properly dispose of these materials
- Work order software that helps schedule and track maintenance

LONG TERM PLANNING

- Assess Systems for I & I
- Rehab/ replacement
- Development of remediation plan
- Explore funding

Oklahoma Municipal Utility Providers (OMUP)

Best Management Practices

Components of Reasonable and Achievable Standards

- Information Management
 - Mapping and record keeping
- Preventative Maintenance
 - Inspections, cleaning, and FOG program
- Corrective Maintenance
 - Repairs and rehabilitation of assets
- Capital Planning and Improvements
 - Hydraulic modeling, capacity improvements

OMUP

Developing Scalability of Standards

Maintenance & Improvement of SS Systems is costly

- Must know what you have - size of systems, mapping, condition
- Must know resources available
 - Staffing & Equipment availability
 - Funding availability
 - Ratepayers
 - General fund subsidies
 - Loans & grants
 - Oklahoma Rural Infrastructure Grant
 - Promote acting collaboratively
- Long term Planning is essential
 - Capital Planning and Improvements (at least five years)



Path to Success Initiative & Partnerships

- The Initiative - municipalities meeting standards will have revenues needed for projects shielded from nuisance claims
- The Initiative - allows municipal funding to be focused on improving and maintaining sanitary sewer systems instead of paying for “nuisance damages” for a handful of sewer backups
- Partnerships –
 - OMUP Resolution in October 2023
 - OML Legislative Committee voted to support the initiative
 - ACOG approved as part of this year’s legislative agenda
 - INCOG (CTAG) is supportive; ORWA is supportive
 - OWRB is supportive; ODEQ is supportive
 - OAMA, Tulsa & OkC are supportive

**SOLUTIONS
THROUGH
LEGISLATIVE
WORK**

SB 1331 – Senator Bullard

- **Earmarks \$125 million for water and wastewater infrastructure projects through OWRB loans and matching funds.**
- **Interest from the loans will go back into the Water and Wastewater Infrastructure Investment Revolving Fund**
- **“Leveraging our tax dollars in this manner makes them go further for crucial infrastructure projects,” Bullard said. “These water and wastewater projects are essential for Oklahoma residents, and improving our aging water infrastructure can also serve as an economic driver to recruit more businesses to the state.”**
- **“This is a long-term solution to address the needs of many localities across Oklahoma,” Bullard said. “Their struggle to fund critical water and wastewater infrastructure projects is real and approaching dangerous levels.”**
- **Now goes to the House**

SOLUTIONS
THROUGH
LEGISLATIVE
WORK

HB 3094 – Rep Boles (Title 82)
SB 1650 – Senator Paxton (Title 11)

SHELTER REVENUES OF MUNICIPALITIES
THAT ARE IMPLEMENTING BEST PRACTICES
FROM NUISANCE LIABILITY

ALLOWS LIMITED TAXPAYER DOLLARS TO
BE USED IN A MANNER TO BENEFIT
BROADER GROUP OF CITIZENS

RESULTS IN BETTER SERVICE TO CITIZENS

RESULTS IN IMPROVED WATER QUALITY

HB 3094 – (stalled in Committee)
SB 1650 – Senator Paxton (left on Floor)



Path to Success through Partnerships

- Sanitary Sewer Systems are expensive
- Assessment of the systems is critical to planning
- Regular Maintenance protocols are imperative
- Aging lines require repair and replacement
- Targeted use of funding is critical
- Developing a long-term financial plan is essential for grant and low interest loan funding
- Protection of revenue from payment of nuisance claims for those cities following standards is crucial

Protected Investment is Needed

- For municipalities that are meeting reasonable standards, nuisance claims would not be allowed
- Encourages municipalities to meet minimum standards
- These are significant issue for smaller municipalities
- Utilizes their limited resources for the greater benefit of all their citizenry
- Curb a current practice of trial lawyers in sanitary sewer overflow cases from recovering **non-economic damages** of nuisance and annoyance
- Eliminates the practice of **stacking** of liability coverage for nuisance (*occupants per household*)



Paths to Success

BETTER PLANNING FOR
EXISTING MUNICIPAL
RESOURCES

REVENUE ENHANCEMENT
OPPORTUNITIES – SB 1331

PROTECTED REVENUE –
SB 1650 / HB 3094
(another vehicle or next year)

BETTER SERVICE TO
CITIZENS

IMPROVED WATER
QUALITY