ENFORCEMENT & CONSENT
DECREE DEVELOPMENTS
PART 1 – WET WEATHER ENFORCEMENT

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RECENT CONSENT DEGREE TRENDS
Background

• U.S. EPA National Enforcement Initiatives
  • CSO Initiative established in 1998
  • 92% of 213 large CSO communities have been addressed (196 communities as of September 2015)
    • Addressed means: enforceable order or U.S. EPA-accepted schedule to develop long-term control plan
  • 47 federal Consent Decrees
Figure 1: Locations of addressed (red) and unaddressed (blue) large CSO communities

2015 Consent Decrees

- Delaware County Regional Water Quality Control Authority – August 17, 2015
- District of Columbia (modification) – May 20, 2015
- City of Harrisburg – February 11, 2015
- City of Lima – November 20, 2014

- June 5, 2012
- Emphasized impact on “use of sustainable and comprehensive solutions, including green infrastructure, that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes that enhance the vitality of communities”
- With respect to enforcement, notes “green infrastructure approaches and related innovative practices that provide more sustainable solutions by managing stormwater as a resource should be considered and incorporated, where appropriate, where they provide more sustainable solutions for municipal wet weather control”
Consent Decree Trends

- Green Infrastructure
- Environmental Justice
- Reopenings
Green Infrastructure – U.S. EPA Guidance

- Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control (March 2014)
- Green Infrastructure Strategic Agenda 2013
Green Infrastructure – U.S. EPA Guidance

Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow (CSO) Control (March 2014)

- U.S. EPA groups CSO control technologies into 4 categories
  1. Operation and maintenance practices
  2. Collection system controls
     - Conventional approaches (gray infrastructure)
     - Green infrastructure approaches
        - Retention
        - Runoff control
  3. Storage facilities
  4. Treatment technologies
Green Infrastructure – U.S. EPA Guidance

Green Infrastructure Strategic Agenda 2013

- One of the goals is to ensure that “green infrastructure language in permitting and enforcement actions is common practice”
- Directs the Agency to consider the use of green infrastructure in all water enforcement actions, including SSO, CSO settlements
Green Infrastructure – U.S. EPA Guidance


- Use green infrastructure:
  - As an element of the remedy
  - To downsize tunnel capacity
- Cannot use green infrastructure as:
  - Substitute for control measures or equipment to be installed or upgraded
Green Infrastructure

- Delaware County Regional Water Quality Control Authority – August 17, 2015
  - Requires City to assess and consider green infrastructure alternatives under the long-term control plan
  - Alternatives evaluation must include assessment of technical feasibility of green infrastructure for source controls
  - Minimum considerations
    - Potential locations for green infrastructure
      - Prioritize based on life-cycle cost, ability to develop effective measures, availability of land, CSO control levels achieved, environmental and socio-economic benefits and impacts and impact on minority and low income neighborhoods
    - Applicability and performance assessment
      - Consider unique features and land uses
Green Infrastructure

• District of Columbia (modification) – May 20, 2015
  • Modifies 2005 Consent Decree
  • U.S. EPA: “We expect that the green infrastructure components of this modification will provide a model of sustainability for others to follow”

• 2005 Decree
  • Required construction of 3 storage tunnels in Anacostia River, Potomac River and Rock Creek Watersheds

• 2015 Amended Decree
  • Anacostia tunnel proceeds
  • Green infrastructure may be incorporated into CSO measures for Potomac River Watershed (reducing size of tunnel) and Rock Creek Watershed (reducing size of or eliminating tunnel)
Green Infrastructure

• District of Columbia (modification) – May 20, 2015
  • Using green infrastructure to retain first 1.2 inches of rainwater on 365 acres in Rock Creek area and 133 acres in Potomac watershed
  • Potentially eliminating Rock Creek storage tunnel and significantly decreasing size of Potomac tunnel depending upon success demonstrated by green infrastructure
  • District providing public space necessary for DC Water to construct proposed green infrastructure projects and making changes to district regulations, codes, standards, guidelines and policies needed for implementation
  • Requiring District and DC Water to work together to coordinate capital projects and expenditures for implementing green infrastructure, enabling efficient use of resources and minimizing costs to ratepayers and taxpayers
Green Infrastructure

- City of Harrisburg – February 11, 2015
  - City “shall consider green infrastructure alternatives as part of the combined sewer system control alternatives under the long-term control plan”
  - Provisions similar to Delaware County decree
Green Infrastructure

- City of Lima – November 20, 2014
  - First decree issued under 2012 Integrated Municipal Storm Water and Wastewater Planning Approach Framework guidance
  - Requires increased capacity (double)
  - But City can modify agreement if green infrastructure is proposed and approved by U.S. EPA and State of Ohio
Environmental Justice – Agency Guidance

• Plan EJ 2014

  • OECA and U.S. EPA Regions, in collaboration with other U.S. EPA offices and U.S. DOJ, are committed to taking action to further ensure that our most overburdened communities are given particular consideration as we implement the Agency’s enforcement and compliance program

  • “Overburdened” – the minority, low-income, tribal and indigenous populations or communities in the U.S. that potentially experience disproportionate environmental harm and risks as a result of greater vulnerability to environmental hazards
Environmental Justice – Agency Guidance

- Plan EJ 2014 – cross agency focus areas:
  - Incorporating environmental justice into rulemaking
  - Condensing environmental justice in permitting
  - Advancing environmental justice through compliance and enforcement
  - Supporting community-based action programs
  - Fostering administration-wide action on environmental justice
Environmental Justice – Agency Guidance

• Plan EJ 2014 strategies:
  • Advance environmental justice goals through selection and implementation of National Enforcement Initiatives
    • CSO Initiative
  • Advance environmental justice goals through targeting and development of compliance and enforcement actions
  • Enhance use of enforcement and compliance tools to advance environmental justice goals in regional geographic initiatives to address needs of overburdened communities
Environmental Justice – Agency Guidance

- Plan EJ 2014 strategies (continued):
  - Seek appropriate remedies in enforcement actions to benefit overburdened communities and address environmental justice concerns
    - These efforts go beyond traditional injunctive relief to stop illegal pollution, to mitigate environmental and public health harm caused by illegal pollution and, where appropriate and agreed to by defendants, to include Supplemental Environmental Projects that provide benefits to communities
  - Enhance communication with affected communities and public regarding environmental justice concerns and distribution and benefits of enforcement actions, as appropriate
Environmental Justice

- City of Harrisburg (February 11, 2015)
  - In analyzing the selection of CSO controls, the long-term control plan shall include an analysis of the plan’s impact on environmental justice populations
Environmental Justice

• Delaware County Regional Water Quality Control Authority – August 17, 2015
  • Must submit a public participation plan seeking input from Chester and surrounding communities that have historically been burdened by pollution and must ensure that long-term control plan and CSO measures will not impose a disproportionate share of negative environmental consequences in future of these communities
  • “It is the latest in a series of settlements with municipalities across the country to address aging and inadequate sewer infrastructure, particularly in older communities where residents have had to deal with sewer overflows for generations. Agreements like this one are a victory for environmental justice”
Environmental Justice

• District of Columbia (modification) – May 20, 2015
  • U.S. EPA press emphasizes that affected geographic areas include communities affected by environmental justice concerns
Environmental Justice

• City of Lima – November 20, 2014
  • Implemented plan will reduce exposure to low-income groups
Modifications

• U.S. EPA policies encourage use of green infrastructure
• District of Columbia modification specifically incorporates green infrastructure
• City of Akron
  • Court denied request to amend 2010 Consent Decree to incorporate language referencing Integrated Planning guidance, where U.S. EPA had rejected “green” alternatives and court viewed modification request as an effort to avoid dispute resolution provisions of 2010 Consent Decree
  • *U.S. v. City of Akron*, No. 5:09CV272 (N.D. Ohio), Order issued March 18, 2015
Questions?

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