

Regulatory Change and the Watershed Approach

Using “All” of the Tools of the
Clean Water Act

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CWA Tools

- Water Quality Standards Including Long-Term Implementation Schedules
- TMDLs
- Water Quality Management Plans
- NPDES Permits - Watershed-Based
- Best Practices – Green Infrastructure

EPA Current Thinking on Watersheds Links --

1. Long-Term Schedules
2. Watershed-Based NPDES Permitting
3. Sustainable Infrastructure

Regulatory Strategies

“Preventative”

1. Frame Statutory, Regulatory, Guidance Context
2. Take Watershed View - WQ Judged in Stream
3. Keep Permit (application) *Current*
 - Put It in the Permit and/or Fact Sheet
 - Schedule Investments – Long-term
 - Imbed Adaptive Management In WQMP/Permits – 305(b)
 - Pursue watershed-based permitting
4. Effective Use of EPA Guidance or Other Scientifically Defensible Approaches
5. Maintain Partnerships
6. Demonstrate New Technologies

Water Quality Standards - WQSs

- Site-Specific Designated Uses, Criteria
 - Presumes Fishing/Swimming or UAA
 - Take a Watershed View – Downstream Protection
 - Refine Uses/Subuses
 - Use “All Available” Biological, Chemical & Physical Data
 - Criteria: EPA Guidance or Scientifically Defensible
 - Exposure
- Implementation Schedules
 - Section 303 and *Star-Kist Caribe*, Adm. Dec. NPDES Appeal
 - Duration –
 - State WQSs - Reasonable Basis
 - 40 CFR Part 122 As Soon As Possible
 - Economic Considerations Included
- Variances - Temporary

Total Maximum Daily Loads

- Impairment Determination
 - All Existing & Readily Available Water Quality Information 40 CFR 130.7
- Bring In Exposure Considerations
 - TSD for Water-Quality- Based Toxics Control
 - EPA 2007 Duration Loading Guidance
- Modeling Favored for Representativeness
 - 2006 Listing Guidance
- Phased TMDLs
- Consider Including SSOs as WLA

WQMP §§303(e), 208

Exemplifies Watershed Approach

- Implement WQS & Embody TMDLs
- Include SSS Correction Program
- Include Long-Term Schedules & Basis
- Lay Groundwork for Watershed-Based Permit
- Best Practices
- Quantification Metrics Green Infrastructure
- Source Trading
- Partner
- Seek Certification for §208 Plans

NPDES Permits

- Tailor to Specific Point Source(s)
 - Describe Facilities in Application
 - Fact Sheet or Statement of Basis
- Enforce Schedules from WQMP
 - As Soon as Possible
 - Long-Term Schedules
- Watershed-Based Permitting Is Site-Specific
 - One Permit or
 - Common Approach to Coordinate Permits
- Look for Other Permittable Sources
- For SSSs, Seek Permitting for Correction Programs & Schedules

Strategies for Rule/Guidance Making

- Bring Abundance of Legal, Technical & Economic Information to the Process
- Use Negotiated Process -- Authorized or Not
- White House Good Guidance Order Controls Federal Guidance
- Partner Including With OMB or Equivalent
- For SSSs, Seek:
 - Permitting for Correction Programs
 - Long-Term Schedules
 - Recognition of “Severe Natural Conditions” & Climate Change

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National Clean Water Trust Fund

To Move the National Clean Water Program Forward

- Uses: construction grants, SRF loans – bond banks, technology demonstrations, §106 state program funding
- Revenue Sources:
 - Long-Term, Sustainable, Reliable, Fair, Equitable
 - Define Users as Contributors, Beneficiaries
 - Low Fee on Range of Products: flushables, fines/penalties, plumbing fixtures, corporate income, recreational water craft, agriculture chemicals
- Authorize states to levy & retain own increment.
- Authorization: Gap Level -- \$10 billion/year

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