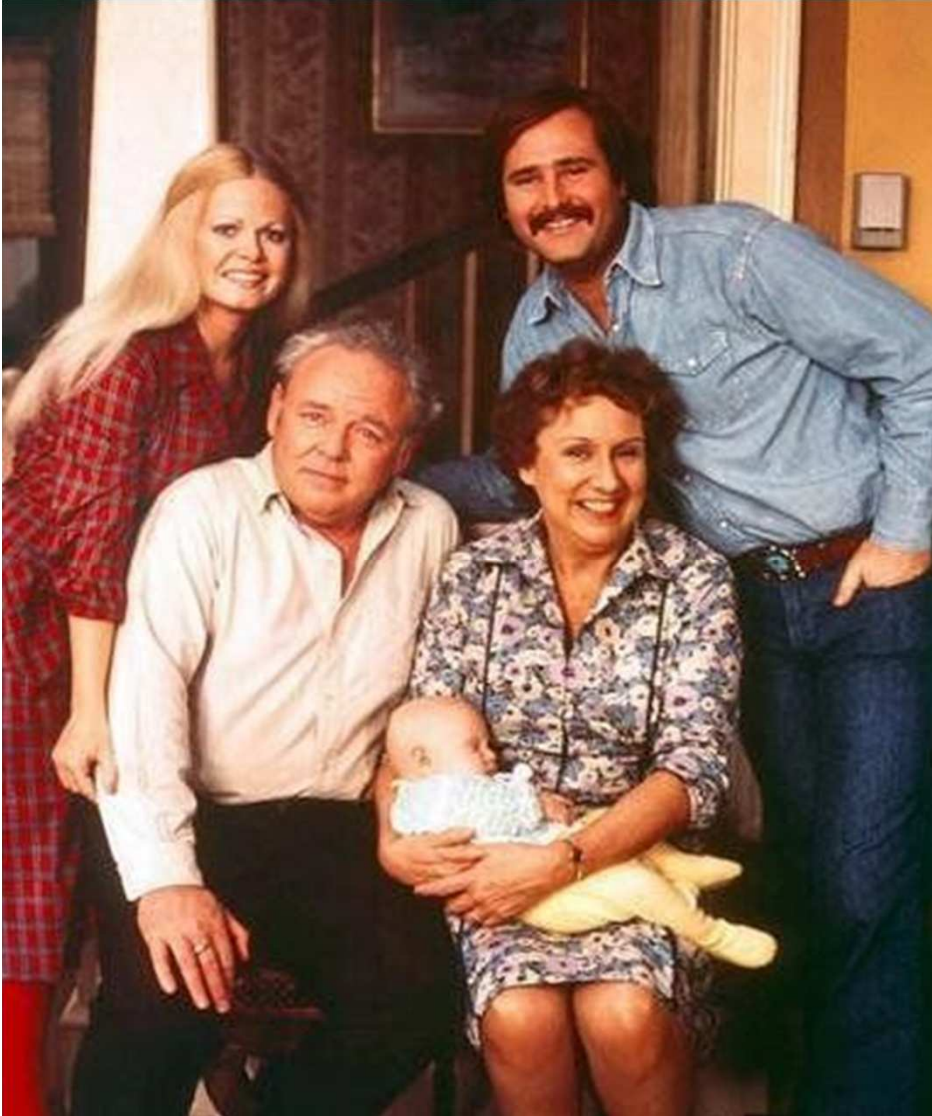


All in the Family:

Roles and Relationships

Between EPA & the States Under the CWA



NACWA

***Clean Water Law
Seminar***

Santa Fe, NM

November 18, 2010

LaJuana S. Wilcher

English, Lucas, Priest & Owsley, L.L.P.

Bowling Green, KY

We the People

- 1786 -1787
- Philadelphia
- Madison



Congress of the United States,
begun and held at the City of New York, on
Wednesday the fourth of March, one thousand seven hundred and eighty-nine.

THE

RESOLVED

ARTICLES

Article the first

Article the second

Article the third

Article the fourth

Article the fifth

Article the sixth

Article the seventh

Article the eighth

Article the ninth

Article the tenth

Article the eleventh

Article the twelfth

Article the thirteenth

Article the fourteenth

Article the fifteenth

Article the sixteenth

Article the seventeenth

Article the eighteenth

Article the nineteenth

Article the twentieth

The Bill of Rights

The Tenth Amendment

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

The Federal Water Pollution Control Act

- 1948 - . Created comprehensive water quality programs and provided financing for state and local governments. Enforcement in interstate waters only.
- The Water Quality Act of 1965 - Required states to issue water quality standards for interstate waters, and authorized the newly created Federal Water Pollution Control Administration to set standards where states failed to do so

EPA created December 1970



FWPCA Amendments of 1972

CWA Section 101(b)

It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act.

EPA's Job

Under § 303 (c) (3) and (4)

- Review states' revised and new water quality standards to determine whether the standard meets the requirements of the CWA
- Notify the state if the standard is not consistent with the applicable requirements of the CWA
- Specify the changes to meet such requirements.
- Promulgate a WQS for the state if the state fails to adopt the changes requested and has not adopted a standard consistent with the CWA

EPA's Job

Under § 303 (d) (2)

- Approve or disapprove the States' identification and listing of waters for which the application of technology based effluent controls required by § 301 (b) (1) (A) and § 301 (b) (1) (B) are not stringent enough to meet WQS.
- Approve or disapprove the States' TMDLs
- Develop the lists and TMDLs for those States were disapproved

EPA's Job Under § 304 (a)

- Consult with Federal and State agencies and other interested persons and develop and publish knowledge on
 - (A) all identifiable effects on health and welfare that may be expected from the presence of pollutants in water;
 - (B) the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and
 - C) the effects of pollutants on biological community diversity, productivity, and stability for varying types of receiving waters.

EPA's Job Under §402

- (a) Issue a permit for the discharge of any pollutant, or combination of pollutants
- (b) Approve a state's submission stating its desire to administer "its own permit program for discharges into navigable waters within its jurisdiction." The Program shall be approved by the EPA if it meets certain requirements.

Conditions for Program Approval

- The state must demonstrate its authority, among other things,
- (1) To issue permits which apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403
- (7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement

Permitting

- 46 States authorized to administer NPDES program under Section 402
- Memoranda of Agreement entered into between EPA and authorized states (and Tribes or Territories)
- Almost one million NPDES permittees
- 95% operate under general permits

EPA's Job Under 309

- SEC. 309. (a)(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act in *a permit issued by a State* under an approved permit program under section 402 or 404 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. *If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.*

Kentucky's 2008 MOA

- State agrees to administer Section 402 Program consistent with the CWA, State Law AND ANNUAL STATE SECTION 106 WORKPLAN.
- State must revise its regulations within one year to conform to new or revised federal requirements, unless a state statutory change is needed. Then it will have two years.

Archie Bunker's Views on Marriage

The only thing that holds a marriage together is the husband being big enough to step back and see where the wife is wrong” Archie Bunker

EPA Clean Water Act Enforcement Action Plan

(Oct. 15, 2009)

“ . . . the Environmental Protection Agency (EPA) is revamping enforcement of clean water laws.”

“EPA must clearly articulate where the bar is for acceptable state programs, and consistently hold states – and EPA where it implements the law – accountable.”

Enforcement

- “EPA and state senior management will annually include water quality standards, permitting and enforcement in planning discussions about appropriate goals, performance expectations, permitting and enforcement program improvements identified in program reviews, inspection and enforcement targeting, roles and responsibilities, work sharing and the avoidance of duplication of effort. Progress will be reviewed periodically throughout the year.
- Enforcement expectations should be a part of the Water National Program Managers Guidance, which already includes guidance for the use of CWA §106 grant funds for state water quality monitoring and permitting. Ensure that the inclusion of performance expectations for the enforcement program in the grant guidance results in commitments in annual (or biannual) grant work plans that will achieve both enforcement and water quality goals.

- Finally, EPA will move immediately toward making additional data that is not enforcement confidential available to the public, increasing the transparency of its enforcement program. We will consult users to help simplify EPA's Enforcement and Compliance History On-Line (ECHO) public web tool, developing better ways to display data and trends that bring data to life – including interactive maps and new, simpler reports.

A Disfunctional Family

- While new approaches and expectations are being designed, ongoing oversight can work to raise the bar of performance under our current system. Where a state is underperforming, EPA will disapprove permits that are not protective of water quality and initiate enforcement actions against dischargers to address serious violations and protect public health and the environment.
- EPA will also explore the concerns of citizen groups that some state enforcement actions have not been effective in achieving compliance. In their input into this Action Plan, some citizen groups voiced concern that in some cases when they provided a state notice of intent to file suit, some states would move to block their suit by issuing an administrative order that did not bring about compliance. To examine this issue, EPA will look into places where this practice is alleged to be widespread and determine if federal action is necessary.

*Happy families
are all alike;
every unhappy
family
is unhappy in
its own way.*

*Leo Tolstoy
Anna Karenina
Chapter 1, Line 1*

