

Environmental Priorities for the Clean Water Act: Sustainable Waters, Sustainable Communities

A NACWA Initiative

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The Importance of Setting Priorities

*We have left undone those things
which we ought to have done; and we
have done those things which we
ought not to have done*

Episcopal Prayer of Confession

Evolution of the CWA

- Stormwater regulation
- Water quality standards for toxics
- CSOs
- TMDLs
- Lower and lower detection limits
- Aquatic life criteria
- Whole effluent toxicity testing
- Independent applicability

In the past 40 years . . .

- EPA has created new compliance priorities
- new and innovative sustainability approaches include green infrastructure, adaptive management and energy recovery
- new technical and scientific advances
- new challenges, such as climate change, increased emphasis on wet weather runoff control, and other issues not contemplated when the Clean Water Act was enacted in 1972

Problem Definition – It's the economy

- Communities are facing serious budgetary shortfalls
 - high unemployment
 - loss of jobs and population
 - increased energy costs
 - competing social, public health, educational and environmental demands
 - limited sources from which communities can raise funds

Problem Definition: “Piling On”

- Increasingly stringent discharge standards
- Sometimes new capital construction is obsolete before it can be completed.
- “Do everything now.”
- Impossible to keep up with new requirements

Problem Definition: Uncertainties

- Unproven science could do more harm than good
- CWA discharge standards can be more stringent than federal drinking water standards. Does that make sense?
- With limited funding, should we invest in sewers or the treatment plant?
- Will these investments result in water quality improvements?

Problem Identification:

Lack of Flexibility = Lack of Opportunity

- No opportunity for adaptive management implementation
- No opportunity for watershed management implementation
- No opportunity for green infrastructure implementation

Problem Definition: Effects of More and More New Requirements

- Lack of compliance – confusion about how to target limited resources
- Costs and benefits becoming disproportionate
- Stress and Anxiety

Compliance priorities are needed!

- >Consider new affordability and financial capability considerations
- >Implement cost-effective solutions
- >Promote innovation
- >Accommodate new scientific information
- >Allow for changed economic circumstances

A New Generation That Considers Priorities . . .

- >expeditiously advance water
quality improvement
- >promote innovation
- >prevent undue economic
hardship on ratepayers

Water Environmental Priorities Act (WEPA)

Section 1 - Title

Section 3 – Definitions

- Defines community waste water treatment systems to include publicly owned treatment works, municipal separate storm sewers, combined sewer systems, or any combination of these systems. It also includes such systems operated by a public-private partnership.
- All other CWA definitions the same

Section 2 – Findings

- Significant progress has been made in reducing the effects of CWWTS discharges to U.S. waters under the CWA
- CWWTSs have provided leadership in environmental sustainability
- CWWTSs have invested over a trillion dollars on waste water & storm water collection & treatment, implementing pollution controls, and pollution prevention

Findings . . . Billions more \$\$\$\$ Needed for Compliance

- EPA's 2008 Clean Watersheds Needs Survey
- U.S. Census Bureau
- American Society of Civil Engineers' 2009 Infrastructure Report Card

Findings

- Many communities facing serious budgetary shortfalls
- To most expeditiously advance water quality improvement, and to prevent undue economic hardship on ratepayers, CWWTSs should be able to establish priorities for CWA compliance, adopt the most cost-effective and innovative treatment and pollution prevention alternatives, utilize new scientific information, and have changed circumstances considered in compliance deadlines.

Priority Plan Eligibility Triggered by . . .

- new scientific data, modeling or other predictive calculations; or
- proposed innovative treatment approaches, including but not limited to adaptive management, watershed management, water quality trading, constructed wetlands or green infrastructure approaches; or
- changed circumstances

Changed circumstances include:

- new regulatory, permitting or other enforceable agreements including judicial or administrative consent orders in effect June 1, 2011;
- efficacy of treatment and management techniques previously implemented;
- watershed protection implementation;
- water conservation or changes in demand and usage;
- changes in population served; or
- changes in the financial capability of the community.

Changes in the financial capability of the community considers

- total federal regulatory burden
- existing and projected public health needs
- current and projected economic factors such as unemployment rates and tax burden
- economic costs and benefits of additional or more stringent discharge permitting requirements for the community waste water treatment system

Effect of Priorities Plan Approval

- “Notwithstanding any other provision” of the CWA, CWWTSs may “comply with the provisions of the Act in a manner and time frame consistent with their priority plan as approved by the State and the Administrator”
- Permits issued pursuant to § 402 shall be modified in accordance with an approved CWWTS priority plan.
- If requested by a CWWTS, EPA shall seek modification of a judicial or administrative order that is inconsistent with an approved priority plan.

Priorities Plan Approval Process

- EPA consults with CWWTSs and States
- Publishes guidance, after public notice and comment
- CWWTS submits application § 402 permitting authority “at any time”
- State (or EPA) must review and approve or disapprove within 60 days
- If State approves, forwards to EPA for final approval

Priorities Plan Approval Process

- EPA must concur or disapprove within 30 days
- If EPA disapproves, must describe what must be done for approval
- States and EPA must approve if priorities proposed by the applicant will, except for nominal compliance dates, meet the regulatory requirements of the CWA in a priority manner, taking into account the financial capability of the community.

EPA Guidance Shall

- Achieve progress toward measurable water quality benefits
- Promote the most cost-effective waste water treatment and pollution prevention improvements for community waste water treatment systems, and
- Consider the financial capability of communities and community waste water treatment systems

EPA Guidance Shall Establish an Application Process that

- minimizes the paperwork requirements for community waste water treatment systems to prepare and submit the applications
- encourages community involvement in the development of the application

To Achieve the Objectives in Developing Guidance, EPA Shall Consider:

- the relative contribution of pollution from community waste water treatment systems to waters of the United States, in comparison to other sources of water pollution and naturally occurring alteration of water quality;
- the fiscal and environmental costs and benefits of additional treatment of discharges from CWWTSs to waters of the U.S.;
- the costs and benefits of implementation of § 208 plan or other watershed planning and implementation practices;
- the overall ecological benefits and long term sustainability of green infrastructure, adaptive management or other innovative treatment technologies as alternative treatment for compliance;

To Achieve the Objectives in Developing Guidance, EPA Shall Consider:

- the public health costs and benefits of alternative treatment for community waste water treatment systems;
- the public health and environmental benefits of collection system maintenance and improvements compared to additional treatment requirements for community waste water treatment systems;
- the financial capability of the community;
- local climatic, economic and population variations; and
- episodic flow impacts compared to acute or chronic impacts in calculating water quality standards.

Section 5 – Permit Extension

- Changes the longest term an NPDES permit can be in effect from five years to ten years