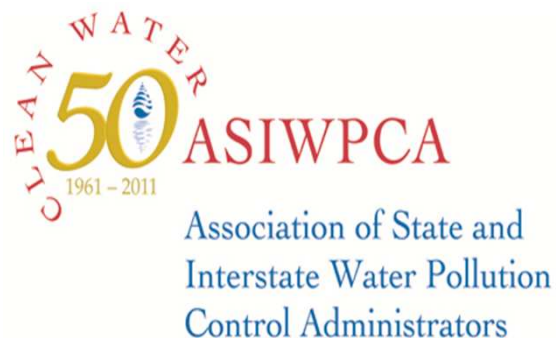


February 3, 2011 – Ft. Lauderdale
ASIWPCA
Alexandra Dapolito Dunn
Executive Director & General Counsel

NACWA 2011 Winter Conference

Square Pegs and Round Holes: State Perspectives on Wet Weather Control and Regulation



*“Long as I remember, The rain been coming down.
Clouds of myst'ry pouring, Confusion on the ground.
Good men through the ages, Trying to find the sun;
And I wonder, Still I wonder, Who'll stop the rain.”*
Creedence Clearwater Revival, 1970



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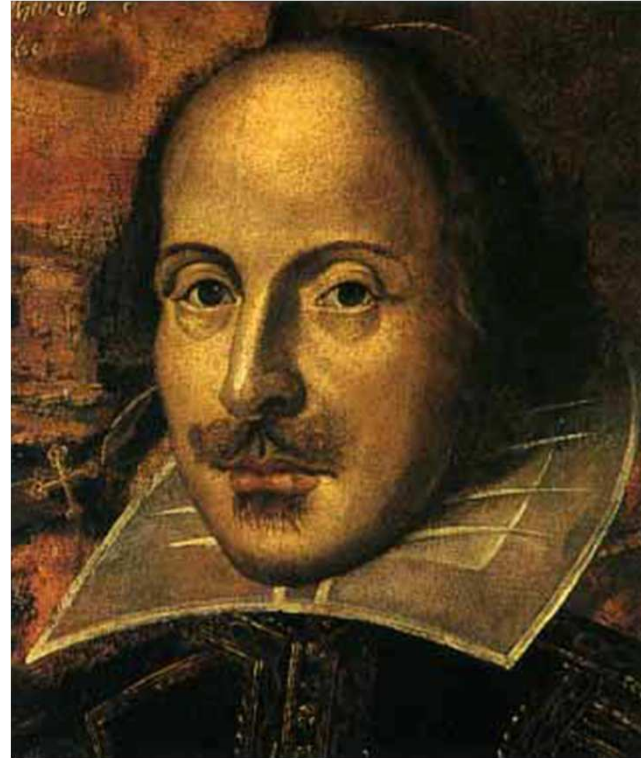
*“The sun did not shine. It was too wet to play.
So we sat in the house, all that cold, cold, wet
day.”* Dr. Seuss, The Cat in the Hat (1957)



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*“For the rain, it
raineth every day.”*

William
Shakespeare,
Twelfth Night
(1601-02)



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“When Noah was 600 years old, on the seventeenth day of the second month, all the underground waters erupted from the earth, and the rain fell in mighty torrents from the sky.” The Bible, Genesis 7:11, New Living Translation (2007)



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Overview

- ▶ Stormwater
- ▶ Combined Systems
- ▶ Sanitary Systems
- ▶ Peak Flows
- ▶ Paths Forward



The NPDES Program Has Been a Success—So We Keep Adding—



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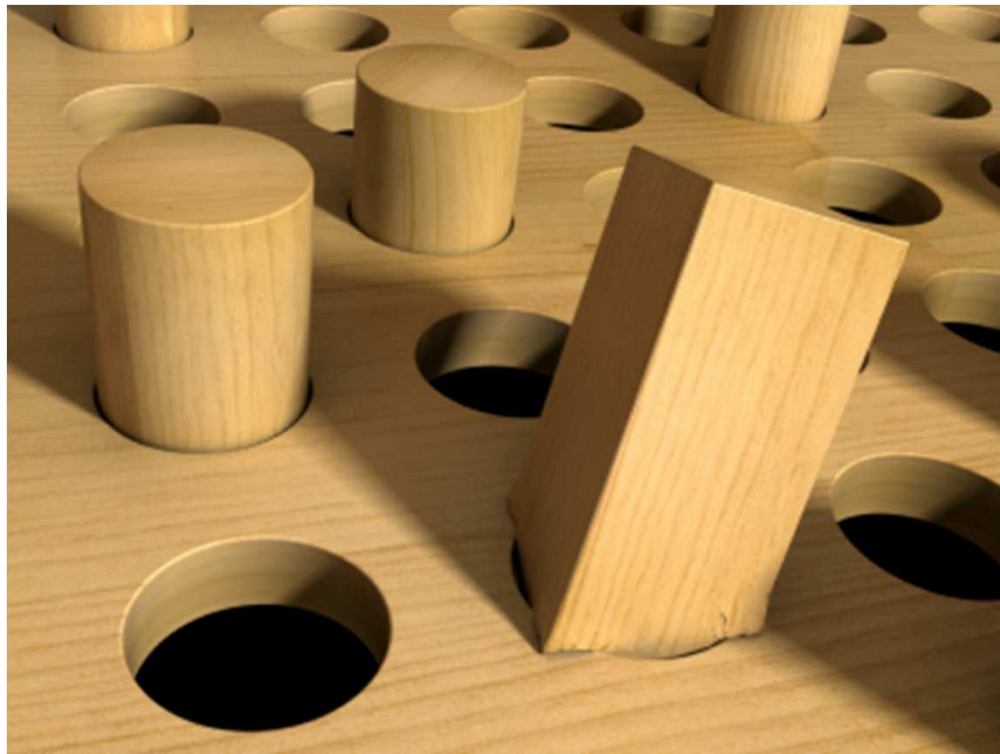
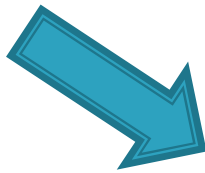
Traditional Process Wastewater vs. Precipitation Driven Discharges

- | | |
|---|-------|
| 1. Predictable and manageable flows | 1. No |
| 2. Identifiable end-of-pipe controls | 2. No |
| 3. Extensive effluent monitoring | 3. No |
| 4. Significant federal and state funding for treatment facilities | 4. No |
| 5. Operator maintains control over influent & effluent | 5. No |

Traditional

Precipitation
Driven

Do We Have a Classic Case of Square Pegs (Wet Weather) and Round Holes (402)?



Time for a New Paradigm

- Traditional end-of-pipe approach isn't working for S/W
- Let's design regulatory requirements specifically for the "reality" of precipitation driven discharges
- Divide the 402 program
- Promote adaptive management and longer timeframes



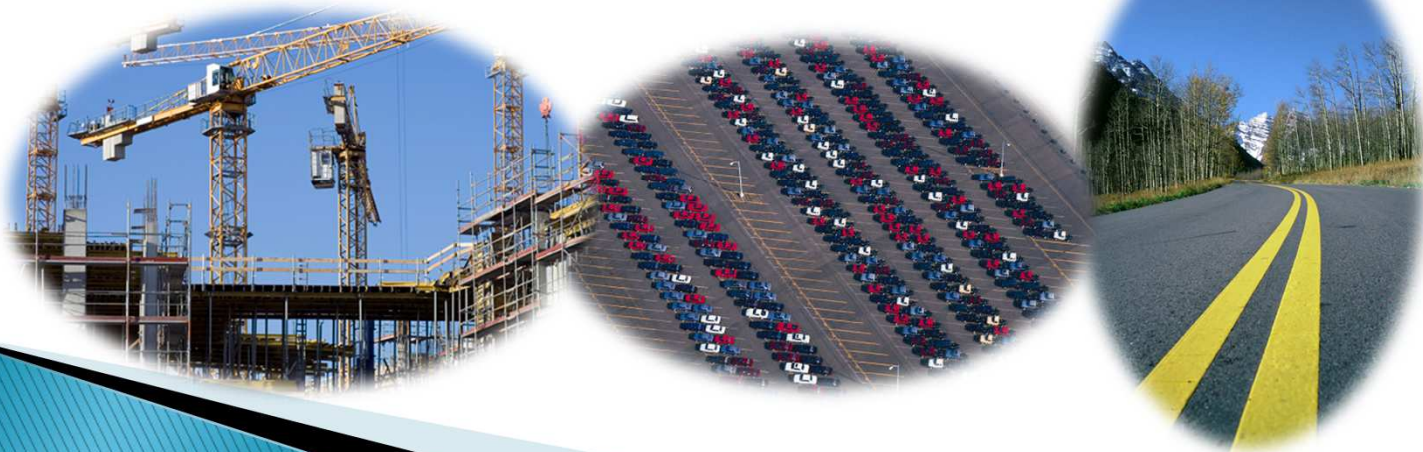
Stormwater BMPs

- ▶ Where selected by the permitting authority as the most appropriate and protective control, and
- ▶ Where designed, installed, and maintained to specified standards,
- ▶ Should fully meet permit requirements.



Numeric Effluent Limitations for Stormwater

- ▶ A numeric limit would likely not be feasible for most MS4 systems and is not legally required
- ▶ Some states may find them appropriate



Stormwater Rule Options

1. Expanding definition of MS4
2. Performance standard for S/W discharge from new sites
3. Performance standard for S/W discharge from redeveloped sites
4. Performance standard for retrofits
5. Green infrastructure

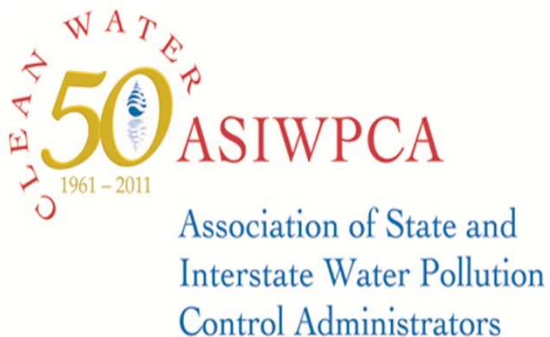
1. Jurisdictional Boundary
2. Distinguish b/w “goal” and enforceable “performance standard”
3. Need to encourage redevelopment, let each state set its own
4. Difficult to move rule forward with retrofits
5. Do not mandate design requirements or limits on impervious cover; guidance

EPA Concepts (12/9/10)

ASIWPCA Input (1/31/11)

Defer to Existing State Programs

- ▶ 402(p)(6)
- ▶ 6217 of Coastal Zone Reauth Act Amendments
- ▶ FL, MD, VA, DE, SC, MA, RI, WI, NJ, MI, MN)



RDA: Need Clarification

- ▶ CWA 402(p)(2)(E) and (6) , 40 C.F.R. § 122.26 (a)(9)(i)(C) & (D)
- ▶ Regional Administrator or, in states where there is an approved state program, the State Director may
 - designate additional stormwater discharges as requiring NPDES permits where s/he determines that:

RDA: Need Clarification

- (A) stormwater controls are needed for the discharge based on wasteload allocations that are part of “total maximum daily loads” (TMDLs) that address the pollutants of concern, or
 - (B) the discharge, or category of discharges within a geographic area, contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States.
-
- When should states use RDA?
 - Elements of RDA petitions?
 - Need more consistency here

CSO Systems

Funding

Inventories

Enforcement

Collaboration

Green Infrastructure

309(e): States must be named in suits against municipalities brought by the government



Sanitary Sewer Systems

1. Collection system permitting programs
2. Enforcement & Guidance



Where are we heading?

- ▶ “First, managing stormwater is becoming one of the most important environmental issues facing cities today.”
- ▶ “Second, new urban development policies will leapfrog oceans of concrete in favor of landscaping that is green, grassy and water absorbent.”



Where are we heading?

- ▶ “And finally, tighter regulations are expected everywhere -- in the stormwater discharge permit process, as well as standards governing sewers and treatment facilities.”
- ▶ "We are," says [NACWA Member Dean] Marriott, "seeing more and more attention to these issues -- by EPA and the state.”

Governing Magazine, Feb. 2011



Time for Renewed Partnership Towards New Ideas

- ▶ Together, we can pilot new concepts at the state/local level
- ▶ Lead from the bottom up
- ▶ Eco-regional approaches
- ▶ Not one-size-fits all



Thank You—For Your Attention and NACWA's Support



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