

The New Enforcement Paradigm: Strategies and Tools to Maximize Economic Flexibility and Environmental Benefit

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NACWA Wet Weather Consent Decree Workshop

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New Strategies & Tools

- Affordability Considerations
- Integrated Planning
- Adaptive Management
- Green Infrastructure

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When to Consider Something New

- Whenever you need relief
 - Negotiating new consent decrees
 - Renegotiating old consent decrees
 - Negotiating permit renewals
- When new obligations are imposed
 - More stringent permit limits
 - More stringent MS4 requirements
 - TMDL implementation

Affordability Considerations

- More serious consideration of “other factors” under 1997 Financial Capability Assessment guidance
 - Census tract analysis
 - Revenue requirements
 - Including broader range of water-related costs
- January 2013 Financial Capability Framework
- Continuing dialog with NACWA, USCM, other stakeholders

Affordability Considerations

- Support exercise of agency discretion
 - Implementation schedules
 - Level of control (where economic feasibility is a factor)
- New paradigm examples:
 - Revenue/financing requirements analysis → longer implementation schedule
 - Detailed census tract analysis → affects selection of SSO design storm

Integrated Planning

- What is integrated planning?
- What does an integrated plan look like?
- What can be integrated?
- Who is developing integrated plans now?
- Is an integrated plan right for me?

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What Is Integrated Planning?

- EPA dialog with NACWA, USCM, other stakeholders
 - Increasing affordability challenges
 - Longer implementation schedules needed
 - Agency should use flexibility in existing law and regulations
- EPA Responded
 - October 2011 draft framework
 - Series of national workshops
 - June 2012 final framework
 - July 2013 FAQ

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What Does An Integrated Plan Look Like?

- Describe water-related obligations to be addressed
- Describe existing systems and performance
- Provide for public participation
- Analyze alternatives to meet obligations
- Prioritize investments to achieve greatest environmental benefits first
- Develop metrics to measure success
- Adaptive management for plan improvements
- Implement through permits or enforcement

What Can Be Integrated?

- Sanitary system
- Combined system
- Wastewater treatment plant
- Asset management program
- Long term operation & maintenance
- Storm water management
- Source water protection
- Nonpoint source control
- NPDES obligations
- MS4 obligations
- TMDL obligations
- Consent decree requirements

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Who Is Developing Integrated Plans Now?

- Small Midwestern community
 - Rust belt; extreme economic challenges
 - Negotiating CD: CSO, SSO, WWTP
 - Facing future obligations: MS4, TMDLs, nutrient standards
- Seeking flexibility through integrated plan:
 - Prioritize investments to address greatest water quality impacts first
 - Establish affordable levels of control for CSO, SSO
 - Obtain very long implementation schedules to spread out financing
 - Keep rates low enough to retain customer base
 - Incorporate asset management needs
 - Use adaptive management as future requirements are imposed

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Who Is Developing Integrated Plans Now?

- Large Northeastern community
 - CSO issues
 - Collection system improvements
 - Long term O&M needs
- Developed integrated plan:
 - Better coordination, prioritization of all CWA-related obligations
 - Incorporation of asset management needs
 - Long-term implementation schedule

Who Is Not Developing Integrated Plans Now?

- Medium-sized Midwestern community
 - City and Sanitary District involved
 - Economically distressed CSO area
 - Negotiating CD: CSO, SSO
 - Bacterial TMDL, future nutrient standards
- Considered integrated plan
- Focusing on green infrastructure
- Agencies considering flexibility without an integrated plan
 - Adaptive management
 - Time to implement green efforts
 - Extended implementation schedule
 - Gray backup plan

Is An Integrated Plan Right for Me?

- Competing water-related obligations
- Multiple entities addressing watershed issues
- Economic limitations
- Need for coordination among agency programs
- Difficulty obtaining relief, flexibility
 - Compliance deadlines
 - Incorporation of green infrastructure
 - Anticipated future obligations → need for adaptive management
- Revisions needed to existing CSO, SSO plan
- CD modification needed

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Adaptive Management

- Discussed as component of integrated plans, green infrastructure efforts
- Historically difficult to craft in CDs
- Typically included as reopeners
 - New water-related obligations
 - Increased costs
 - Competing priorities
- New paradigm example:
 - Store/treat units sufficient to achieve selected level of control
 - Discretion to implement innovative practices
 - CD allows resizing, consolidation, or elimination of store/treat units as long as performance criteria achieved

Green Infrastructure

- Many communities interested in green infrastructure
- Historically difficult to craft in CDs
 - Performance unclear
 - Timing issues if gray needed later
- Increased agency focus on/comfort with green efforts
 - Better performance data
 - Better information on cost-effectiveness
 - Address source of CSO/SSO issues
 - Help satisfy MS4 obligations
- March 2014 EPA guidance: Greening CSO Plans
 - Incorporate into CSO LTCPs and consent decrees
 - Use adaptive management during implementation

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Green Infrastructure

- New paradigm example:
 - Favorable soils/topography
 - Relatively low annual CSO volume
 - Substantial green opportunities on public property
 - Green streets
 - Permeable alleys, parking lanes, cross-walks, sidewalks
 - Stormwater retention/infiltration projects
 - Bioswales, wetlands
 - Negotiating consent decree structure:
 - Commit to level of control city-wide
 - Model green infrastructure opportunities on sewershed basis
 - Implement selected green projects modeled to achieve performance criteria
 - Build gray (likely storage) only as last resort

What Is The New Paradigm?

- Flexibility within current statute and regulations
- EPA encouraging regions to use existing flexibility more frequently
- Ongoing discussions of remaining hurdles
- Several new strategies & tools for municipalities to consider

Questions?

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