

Stories From the Front Line

NACWA

2014 Wet Weather Consent Decree Workshop

Chicago, IL

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A PREFERRED PLAINTIFF?

- EPA DEFERENCE TO THE STATE?
- CWA § 309(g) / STATE JUDICIAL ACTION
- CITIZEN SUIT 60-DAY NOTICE

MISERY LOVES COMPANY

- OUTLYING JURISDICTIONS AS CO-DEFENDANTS
- CONTRACTUAL ABILITIES TO LIMIT PEAK FLOWS FROM OUTLYING JURISDICTIONS
- INTER-JURISDICTIONAL PROGRAM AS PART OF A SETTLEMENT

NEGOTIATING THE NPDES PERMIT AS PART OF THE SETTLEMENT

- **MODIFIED NPDES PERMIT AS PART OF SETTLEMENT**
- **ANTI-"FORWARD SLIDING" PROVISION**
- **IMPLEMENTATION OF NMCs**

NPDES PERMIT (cont.)

- **DELINEATION OF RESPONSIBILITIES OF MORE THAN ONE MUNICIPAL ENTITY**
- **DIVERSION OF FLOWS, BLENDING AND BYPASS?**
- **CITIZEN SUIT 60-DAY NOTICE**

TIMING

- **UNDERTAKING SOME NEGOTIATED MOM ACTIONS BEFORE FINALIZING THE CONSENT DECREE?**
- **HOLD OFF ON NON-NEGOTIATED ITEMS?**
- **CMOM PROGRAM SUBMISSION**

BIGGEST MISTAKE, FORGETTING THE . . .



CMOM PROGRAMS

- EPA's RIGHT TO APPROVE/MANDATE CHANGES
- DISPUTE RESOLUTION PROVISION
- OBJECTIVE
- SETTLEMENT OCCURRING ONLY AFTER DEVELOPMENT OF SOME/ALL CMOM PROGRAMS?

BLENDING/BYPASS

- WITH *ILOC* CASE, IT IS IMPORTANT TO PUSH THIS ISSUE.
- HOLDING UP WORK – NEED TO DOCUMENT.
- USE OF ANTICIPATED BYPASS
 - RESERVE RIGHTS
 - CLARIFY IT IS A DEFENSE

TO SEP OR NOT TO SEP, THAT IS THE QUESTION

- IS IT ALWAYS A “WIN-WIN” SITUATION?
- DOLLAR-FOR-DOLLAR CREDIT?
- EFFECT OF “STATE-SEP”
- IS THERE ANY UNCERTAINTY OF SPENDING SEP \$?
- SEP RESOURCE COMMITMENTS

BUILDING BACK-UPS

- NEED TO DISTINGUISH DIFFERENT FACETS OF HOW THE SETTLEMENT CAN ADDRESS BASEMENT BACKUPS, IF AT ALL.
 - ELIMINATE SSOs?
 - STIPULATED PENALTIES?
 - TRIGGER CMOM PROGRAM TO CLEAN-UP?

A FINAL THOUGHT

- **THERE IS NOTHING WRONG WITH SEEKING THE BEST PROVISIONS FROM EXISTING CONSENT DECREES OR SEEKING TO CREATE A BETTER STANDARD.**

For Additional Information

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