

The 21st Century Watershed Act Narrative Summary

The Clean Water Act (CWA) has facilitated vast improvements in water quality across the nation since it was enacted in 1972, primarily through reductions in point source discharges. The incremental rate of improvement to water quality has slowed significantly in recent years, though, and the goal of the CWA to “restore and maintain the physical, chemical, and biological integrity of the nation’s waters” has not been fully achieved. In the early 1990s, EPA began exploring the concept of a watershed-based approach as a way to meeting the CWA’s goal, and the National Association of Clean Water Agencies (NACWA) established a Strategic Watershed Task Force in 2007 to investigate if a watershed approach may still be the best way to further improve water quality.

In the opinion of the Strategic Watershed Task Force members, the CWA requires several modifications to preserve the progress already made and to continue improving the quality of our nation’s waters. While the CWA addressed the most significant sources of water pollution in 1972, water quality problems have changed significantly since that time. The current regulatory frameworks of the CWA and other federal environmental laws were not designed to implement environmental protection and enhancement on a watershed basis, and therefore cannot address all sources of pollution. The Task Force undertook the task of crafting a legislative solution to this dilemma, resulting in the draft 21st Century Watershed Act (TCWA). The TCWA is overarching federal legislation that modifies specific sections of the CWA to focus environmental protection efforts on a watershed basis, incorporating the successful regulatory framework of the Clean Air Act (CAA) to establish a comprehensive, holistic watershed management approach.

Over the last 35 years, the CWA and CAA have evolved to utilize elements from each other to advance improvements in their respective regulatory programs. This evolution is continued in the TCWA. To form a regulatory framework for a watershed approach, the TCWA uses a structure parallel to the CAA’s effective Statewide Implementation Plans (SIPs). Watershed Commissions would be established for each U.S. Geological Survey 8-digit HUC (hydrologic unit code) watershed. These Watershed Commissions, composed of a broad spectrum of local stakeholders, would undertake a watershed assessment to evaluate the factors which affect the watershed’s health and condition, including water quantity, water quality, and aquatic and riparian habitat functionality. Watershed Improvement Plans (WIPs) would then be developed to address all stressors within the watershed in a prioritized fashion, ensuring the greatest environmental benefits for the watershed. The WIPs are then aggregated into State Watershed Improvement Plans (SWIP), which requires EPA approval. In the case where the 8-digit HUC watershed covers more than one state, the TCWA allows for the creation of Interstate Watershed Commissions.

Under the TCWA, existing water quality standards remain in place and serve as the minimum water quality standards. EPA is given responsibility for establishing a new, four-tiered watershed quality assessment guideline that would consider the chemical, physical, and biological health of the watershed and the aquatic environment. The WIPs must be developed to achieve the highest assessment tier within 20 years of the enactment of the TCWA. Progress towards full implementation of the WIP and SWIP will be monitored by EPA, and failure to make progress will result in the discontinuation of all Clean Water Act funding for these programs.

The current CWA has a pollutant-by-pollutant and stream segment-by-segment approach for addressing water quality problems. Sections 303(d) and 305(b) of the CWA require that states report on the status of their surface waters and list all impaired waters in the state, triggering total maximum daily load (TMDL) development for the impaired waters. The TCWA modifies this approach by utilizing the watershed assessments in lieu of the 303(d) and 305(b) lists. By utilizing the framework in the TCWA, states can use a more comprehensive watershed approach to address all sources of pollution to the watershed from both point sources and non-point sources (e.g. urban runoff, agricultural runoff, and air deposition). TMDLs can still be used as one method to address water quality problems, but other options can also be presented in the WIPs. This is the same approach used for the SIPS in the CAA, where the state determines the activities and programs used to achieve attainment with the air quality standards with federal authority to step in if the states fail to do so. The TCWA also uses this local ingenuity to develop a prioritized, cost-effective, locally-supported plan for standards attainment.

NACWA believes it is time to implement the CWA in a way that considers the overall health of watersheds on a physical, chemical, and biological basis, moving beyond the one-dimensional, pollutant-specific approach that has prevailed in the last 35 years. Under the proposed TCWA, all issues of water quality, water quantity, and habitat will be evaluated within each watershed, and prioritized plans for improving watershed health will be developed and implemented under local and state leadership. By using this comprehensive watershed approach, the goal of the CWA may finally be achieved.