

Speaking the Language: The Relationship Between States and Permittees

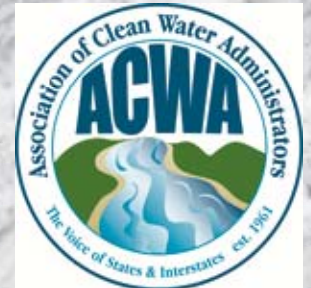


NACWA Developments in Clean Water Law Seminar
11/16/11

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Executive Director & General Counsel

Association of Clean Water Administrators



**Replace with STATE
ENVIRONMENTAL OFFICE**



INTERNAL REVENUE
SERVICE



*"It's funny how two intelligent people can have
such opposite interpretations of the tax code!"*



Replace with ENVIRONMENTAL REGULATIONS

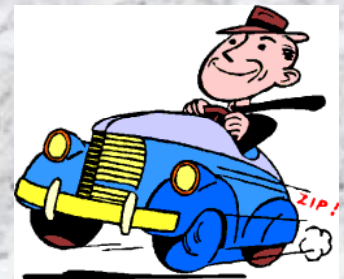
Communicating to Spur Innovation



"I'll start thinking outside the box when the box is empty."

Communicating to Drive Innovation

- “Improved environmental outcome
- Other environmental benefit (e.g., same water endpoint but better air or solid waste management)
- Lower cost
- Non-discharging alternative
- Benefit to environmental justice community”



Communicating Alternatives

- “Identify on the front end a reliable and realistic fall-back alternative if the innovative idea crashes -- give state confidence that resources would be available to implement that in reasonable time”



Communication Breakdowns

- “If we've seen the proposal crash before
- If it's a high-tech system that will require dedicated operation by high trained staff
- If we'll be stuck with the problem in the event of a crash
- If the rules on their face just don't allow it
- If the community just plain doesn't like the idea”



Communicating a Fit

- “A new idea is more appealing when it comes with site specific data to back it up. Many times we see an applicant propose an approach that works great in one climate or is perfect for other soils, but lacks basis for applicability to our state ... The applicant should connect the dots with how our climate, soils or water quality are suitable for the application.”



Communicating the Details

- “Gather water quality data upstream and downstream of the discharge point. This will help in developing a more accurate waste load for the permit. State data may be lacking and result in more stringent permit requirements.”



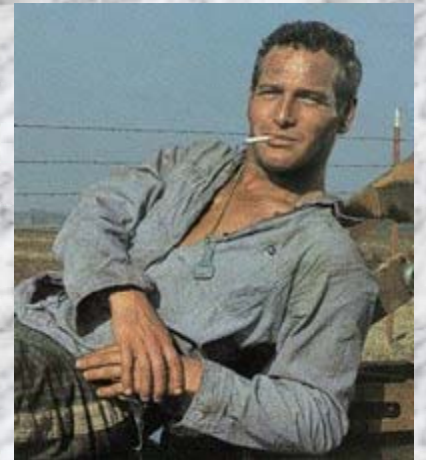
Communicating Homework Done

“Innovations ... are critical to our future success for maintaining and improving water quality. States need to be open and willing to look at things differently. But given state resource limitations and workload demands, it’s critical that entities do the homework to ensure that an innovation is well founded.”



***“What we’ve got here is
a failure to
communicate”***

-- Paul Newman, Cool Hand Luke (1967)



Communicate Early & Often

- “Talk to your regulators early in the process – not after spending a lot of time and money
- Be upfront ... ‘I don't know’ is an acceptable answer especially in the early part of the discussions
- Be willing to make minor changes to the project to get most of what you want”



Keep the Lines Open

“When there is a problem or concern -
pick up the phone”



And Finally...

Develop relationships:

Invite permit writers to
board/council meetings;

For an in-depth tour of the
facility and to meet with your
staff



States Communicating

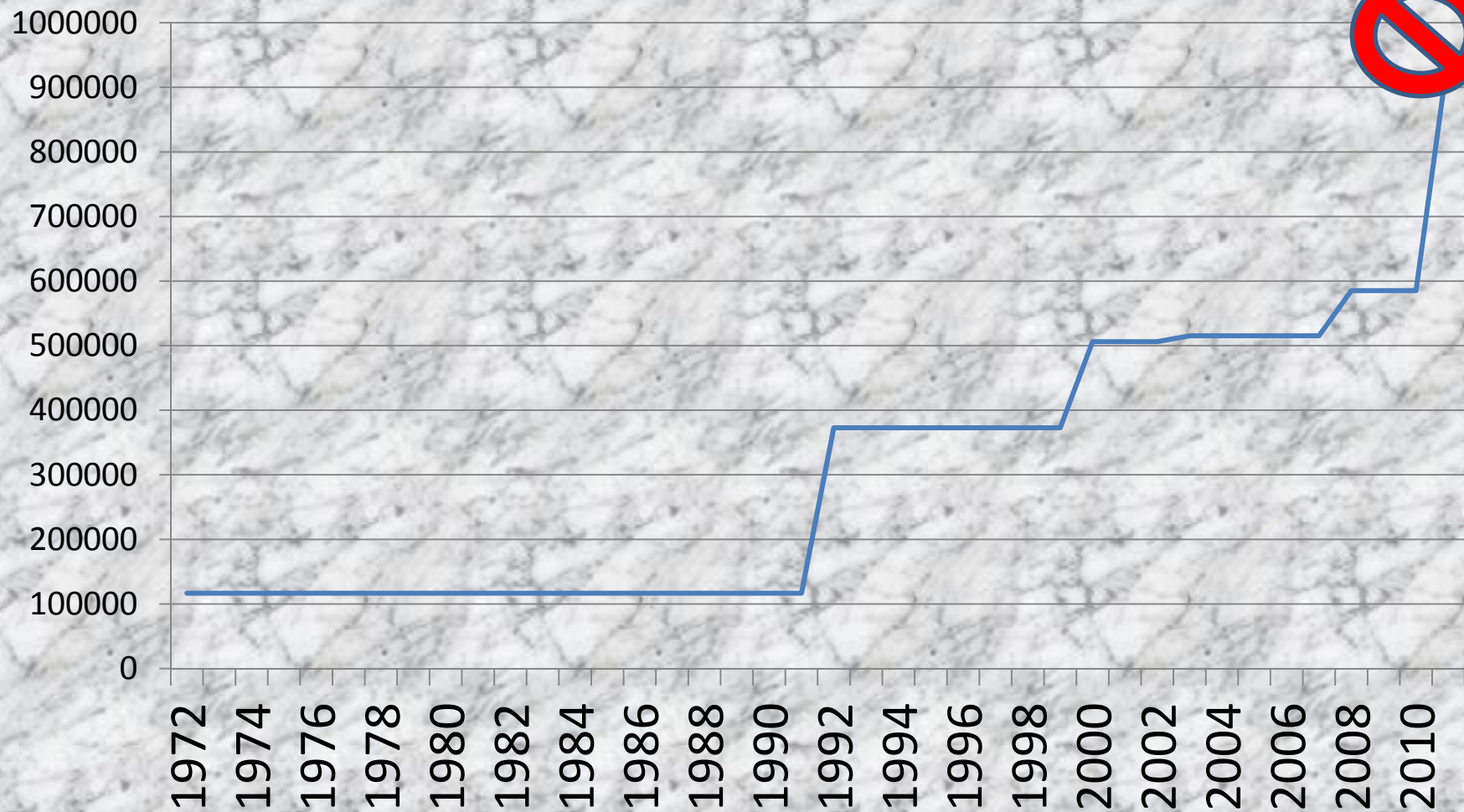
- Resources
- Biocriteria
- Numeric Nutrient Criteria Alternatives
- Water Quality Standards Revisions
- Stormwater



The Growing NPDES Program



NPDES Permit Universe



— Number of Permittees



June & October 2011 Congressional testimony on why states should have flexibility in addressing nutrients, using weight-of-evidence approaches, limits of IA



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 2 - 2011

OFFICE OF WATER

Herschel T. Vinyard
Secretary
Florida Department of Environmental Protection
3900 Commonwealth Boulevard
Tallahassee, Florida 32399

Dear Secretary Vinyard:

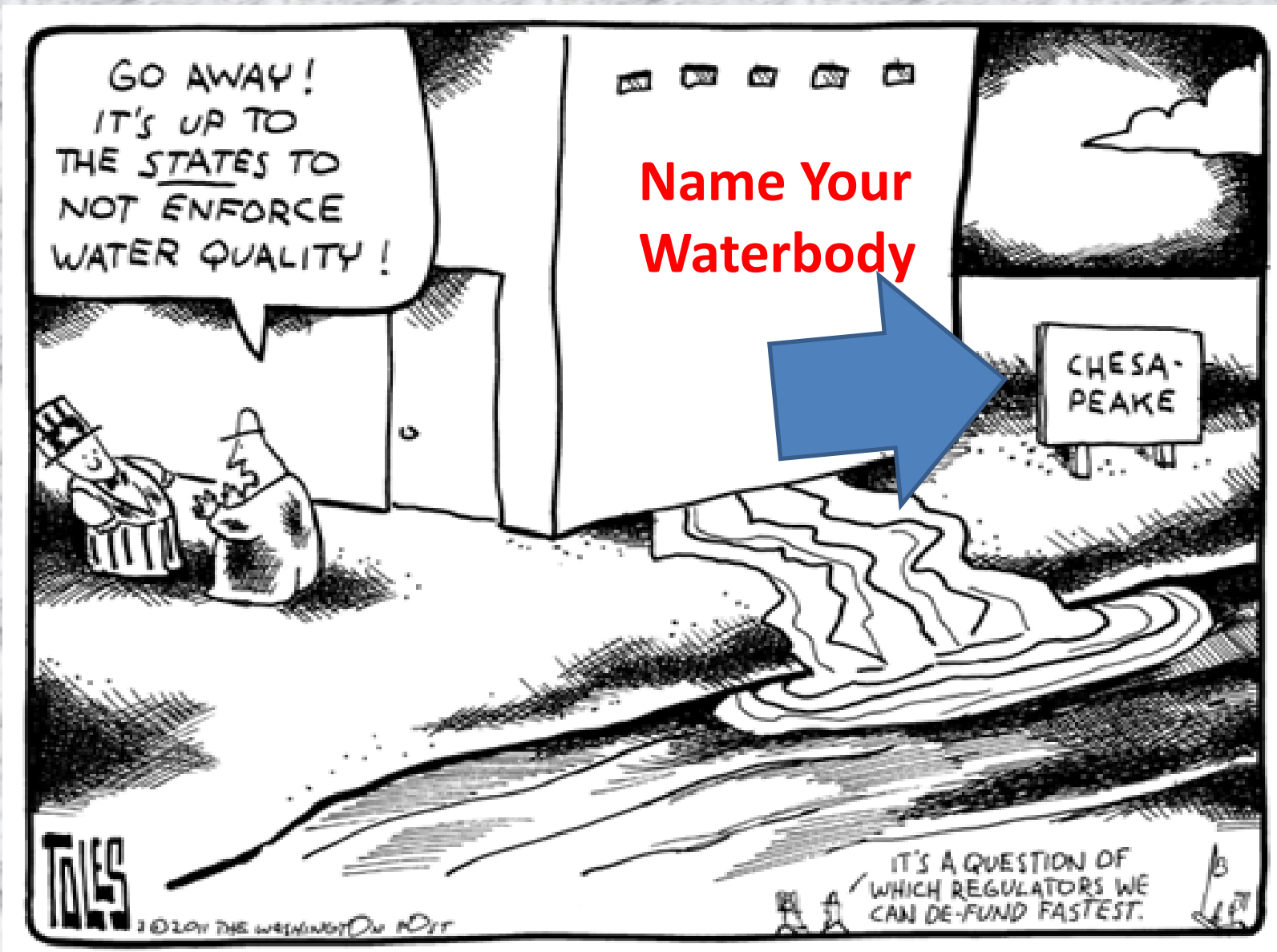
finalized in our inland waters rule. Under FDEP's draft rule, the criteria will be applied in combination with biological information to determine if the water is attaining its uses. This "biological confirmation approach" to determining the nutrient health of a stream is one that several states currently have under development and is an approach EPA is prepared to support if properly constructed with appropriate numeric end-points for assessing biological information in combination with numeric criteria.



Stormwater

- Traditional end-of-pipe approach isn't working for stormwater
- Let's design regulatory requirements for the "reality" of precipitation driven discharges
- Promote adaptive management, longer timeframes





States Need to Communicate Effectively Too

Opportunities to Communicate Together

**Integrated Water Management
Stormwater**

**Innovative Programs (SSOs,
Nutrient Reductions)**

**Agricultural / Non-Point
Funding**

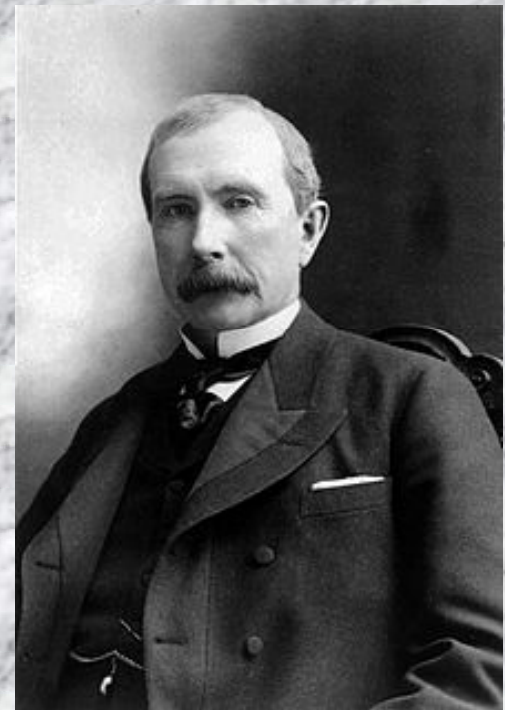
**Emerging Contaminants
Biocriteria**



Looking Ahead

***“Don’t be afraid to give up the good
to go for the great.”***

-- John D. Rockefeller



Looking Ahead

“Everyone here has the sense that right now is one of those moments when we are influencing the future.”

-- Steve Jobs



