

**WESTCAS 2011 Annual  
Conference**

# **Current Regulatory Issues**

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# Stormwater

## I. Stormwater Fee Legislation

- ▶ **Passed by Congress on December 2010 (S. 3481), signed by the President January 2011 (Public law Number 111-378). Copy available at [www.nacwa.org](http://www.nacwa.org) under Stormwater Management section.**
- ▶ **Amends Section 313 of the Clean Water Act to clarify that stormwater utility fees constitute a reasonable service charge, not a tax, and must be paid by federal government facilities.**
- ▶ **In March 2011, U.S. Department of Justice published legal opinion interpreting language of stormwater legislation and clarifying that federal agencies may pay local stormwater fees using annual lump-sum appropriations for normal operating expenses and do not need stormwater-specific appropriations. DOJ legal opinion available at <http://www.justice.gov/olc/memoranda-opinions.html>.**

# Stormwater

## II. Post-Construction Stormwater Rule

- ▶ In December 2009, EPA announced it was considering development of new national post-construction stormwater rule. Announcement available in December 28, 2009 Federal Register, 74 Fed. Reg. 68617.
- ▶ EPA will publish proposed rule for notice and comment in September 2011, publish final rule in November 2012.
- ▶ Rule expected to encourage the use of green infrastructure, low impact development techniques to retain a certain percentage of stormwater onsite. Major rule elements include:
  - Expanding area subject to federal MS4 jurisdiction;
  - Establishing performance standards for new development and redevelopment projects to retain stormwater onsite;
  - Establishing retrofit requirements/plans for areas of existing develop to reduce impervious surface.

# Stormwater

## III. EPA November 2010 Stormwater Memo

- ▶ EPA issued memo in November 2010 to Regions, States calling for inclusion of numeric effluent limits in stormwater permits.
  - Memo available at [www.epa.gov/npdes](http://www.epa.gov/npdes), then click on Stormwater link.
- ▶ States and regulated community NOT consulted before memo was published.
- ▶ NACWA, FWQC, other organizations challenged legal, procedural basis for memo. In March 2011 EPA agreed to public comment period on memo,
  - Available at [www.epa.gov/npdes](http://www.epa.gov/npdes), then click on Stormwater link
- ▶ EPA currently reviewing public comments, will decide by August whether to amend or withdraw memo.
  - NACWA, FWQC comments available at [www.nacwa.org](http://www.nacwa.org) and [www.fwqc.org](http://www.fwqc.org).

# Stormwater

## IV. Construction General Permit

- ▶ EPA proposed new CGP on April 25, 2011 at 76 Fed. Reg. 22882
- ▶ New CGP has a number of changes from the 2008 permit necessary to implement new Effluent Limitation Guidelines and Construction and Development Rule.
- ▶ EPA accepting comments on proposed CGP until July 11, 2011.

# **EPA Regulatory Review**



# EPA Regulatory Review

- ▶ EPA published *Improving Our Regulations: A Preliminary Plan for Periodic Retrospective Reviews of Existing Regulations* on May 24th outlining EPA plan to:
  - Periodically review existing regulations to eliminate regulatory inefficiency and to
  - Determine whether any regulations should be modified, streamlined, expanded, or repealed.
  - Plan is available at <http://www.epa.gov/improvingregulations>.
- ▶ The plan was issued in response to the President's Executive Order 13563, issued January 2011.
  - The Executive Order is available at <http://www.regulations.gov>.
- ▶ EPA's Plan defines 31 regulatory reviews for the first review phase.
  - Sixteen of the reviews are "early action," and 15 are longer term.

# EPA Regulatory Review

- ▶ Among the sixteen “early action” areas for review are
  - Permitting requirements for sanitary sewer overflow (SSOs);
  - Peak flow wet weather discharges;
  - Work between EPA, the U.S. Department of Agriculture, and states to develop programs to ensure that farmers’ actions are consistent with state water quality improvement plans;
  - Efforts to coordinate requirements and remove outdated requirements from the NPDES permit program.
  
- ▶ Longer term actions include
  - Reducing burden of reporting requirements under CWA Section 303(d);
  - Simplifying and clarifying requirements under Water Quality Standard regulations;
  - Simplifying and clarifying drinking water regulations for lead, copper;
  - Coordinating regulatory requirements for contaminants regulated under the SDWA.

# EPA Regulatory Review

- ▶ EPA is accepting comment on the plan until June 27.
- ▶ EPA will continue to seek public comment to nominate additional regulations for review on a five-year cycle by reporting on reviews that are underway through the Semiannual Regulatory Agenda (published twice a year in the Federal Register), at
  - <http://www.epa.gov/open/>, and
  - <http://yosemite.epa.gov/opei/RuleGate.nsf/>.
  - These websites, along with a docket on <http://www.regulations.gov>, will facilitate public involvement as well as transparency.
- ▶ Additional items for review NACWA would like to see on the list include:
  - Revision of EPA's 1997 affordability guidance and additional efforts to allow local regulatory prioritization and efficient use of local resources in line with NACWA's *Money Matters* campaign.
  - Clarification of EPA's position on sewage sludge incineration, green infrastructure, nutrients and water quality criteria development.

# Other Pending Regulatory Issues

- ▶ **Water Quality Standards Regulation**
- ▶ **Guidance on Antideg Listings**
- ▶ **Criteria – Chloride, Ammonia, Selenium**
- ▶ **Pinto Creek and Permits for New Sources**
- ▶ **PCB Test Method**
- ▶ **Sensitive Test Methods Requirement**
- ▶ **Conductivity Benchmark**
- ▶ **Whole Effluent Toxicity**

