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 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.

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II. Post-Construction Stormwater Rule


- 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.
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).
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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](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](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/](http://www.epa.gov/open/), and
  - These websites, along with a docket on [http://www.regulations.gov](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