

# Federal Clean Water Issues

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# Issues Pending or Upcoming in DC

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- NUTRIENTS
- Construction & Development Guidelines
- Permitting for New/Expanded Sources
- Chesapeake Bay as National Model
- Whole Effluent Toxicity
- CWA Enforcement Plan
- Changes in Criteria

# NUTRIENTS – ISSUE NO. 1

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- Environmental group petition to EPA on revising definition of “secondary treatment” for POTWs to include nutrient removal
- Environmental groups petition to EPA on Federal WQS and TMDLs to address nutrients in waters in Mississippi River Basin and Northern Gulf of Mexico

# MORE ON NUTRIENTS

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- EPA/State nutrient task force just issued a report calling for action to address point and nonpoint sources
- EPA is moving to develop numeric WQS for nutrients in Florida – could happen elsewhere as well
- EPA draft guidance on stressor/response approaches to nutrient criteria – under SAB review, draft report expected in late October

# Construction & Development

- EPA has proposed new effluent limitations guidelines (ELGs) for construction and development activities
- Comments were submitted in Feb., including by FWQC and Federal StormWater Assn
- EPA proposal includes several options – one possibility is numeric limit on turbidity
- ELGs would affect many construction projects, and could add substantial costs
- Final ELGs must be issued by Dec. 1, litigation likely after that

# Permitting for New Sources

- Ninth Circuit Court of Appeals in CA issued ruling in Pinto Creek case that affects permits for new sources to impaired waters
- Ruling could make it almost impossible to get permits for those sources
- Likely that environmental groups will raise similar challenges to other permits
- EPA is going to develop revisions to the relevant rule – 40 CFR 122.4(i)
- Changes will likely allow offsets and trades – will apply to new AND expanded discharges

# Chesapeake Bay

- President issued Exec Order on Bay
- EPA has issued 7 draft reports
- Formal strategy and draft reports to be issued for comment on Nov. 9
- Reports recommend major changes in regulatory/permitting program as to Bay, including substantial restrictions on construction and retrofitting of existing sites to address stormwater impacts
- EPA staff have stated clearly that Bay approach may be used as model for application to other watersheds around country
- Substantial legal issues about authority of EPA here, especially as to interference with state authority
- Policy implications of federal land use controls

# Limits in Stormwater Permits

- Environmental groups are bringing challenges to permits for stormwater discharges, arguing that numeric limits are required instead of just SWPPPs
- MS4 permits are getting more stringent – including numeric limits and benchmarks
- NAS issued report urging radical changes to stormwater permit program – would need CWA changes to fully implement
- EPA has two work groups developing responses to NAS report - on flow issues and on watershed permits



# Whole Effluent Toxicity

- EPA has been working on draft WET guidance as to new Test of Significant Toxicity approach for determining when WET limits should be issued
- That gives states 3 options – TSD approach, modified SC percent effect approach, and TST – FWQC is evaluating pros/cons
- EPA fighting with TX and CO over WET provisions in permits – EPA thinks state too lenient, especially on sublethal

# CWA Enforcement Plan

## Key recommendations in new CWA Enforcement Plan issued by EPA:

- Target compliance and enforcement efforts to sources causing more significant water quality impacts
- Responses to water quality problems and related permit violations may include: enforcement actions, fixes to rules, or permit modification or reissuance to be more protective
- Where state is "underperforming" in NPDES program, "EPA will disapprove permits that are not protective of water quality and initiate enforcement actions to address serious violations and protect public health and the environment"
- New rule to require permittees to submit DMRs electronically
- Efforts to make more data available to public
- More enforcement as to CAFOs

# Changes in Criteria

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- Selenium – EPA has been moving toward fish tissue/egg basis, but still possible that will do water column; draft in 2010 for comment
- Ammonia – EPA will revise to make more stringent based on freshwater mussels; draft in 2010 for comment

# Questions?

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