

# Advancing Smarter, More Holistic Regulations

## Advancing Smarter Regulations and Enforcement

The Clean Water Act (CWA) is one of the nation's most successful environmental statutes, and EPA's efforts to implement and enforce the law have played a big role in its success. But after more than four decades of significant progress under the Act, we have reached a point where many of EPA's regulatory and enforcement actions involving the municipal clean water community are creating unsustainable burdens that produce marginal, if any, environmental benefit. The Nation's utility leaders are public stewards who are committed to ensuring the goals of the CWA are met or exceeded. We all have the same objective: further water quality progress for our communities and protection of our cherished natural resources. But the time has come for a smarter and more holistic approach to advancing the goal of clean water.

With its water quality criteria recommendations and related policies, we have reached a point of 'relentless incrementalism', where EPA is focused on controlling pollutants to ever lower levels with insufficient consideration of the other factors that impair water quality or whether the new pollutant levels will lead to actual water quality improvements. Many of these new mandates are implemented not as rules, but as policies and recommendations that do not receive the same thorough public review and analysis as formal rulemakings. On the enforcement front, EPA is continuing a trend of forcing municipal clean water agencies into costly enforcement actions without a full understanding of actual resulting environmental benefit or attempting to first provide compliance assistance.

NACWA believes there are more effective regulatory and enforcement actions – within the broad strokes of the current CWA statutory framework – that EPA can take. NACWA is advancing these through a variety of means, including:

- *Continued Support for Integrated Planning & Community Prioritization of Clean Water Investments* – EPA's embrace and support of Integrated Planning concepts, which provide clean water utilities with more flexibility and control in how they meet their regulatory compliance obligations and prioritize their investments, is one of the most important clean water regulatory developments of the past decade.

NACWA is proud to have been a driving force behind the Integrated Planning movement and is working with EPA, the states and Congress to increase the availability of Integrated Planning options, especially in the permitting context. NACWA is also encouraging EPA to provide funding and support to select communities – as pilots – to develop integrated plans.

- *A More Holistic Approach to Water Quality* – The technology based standards of the CWA have been instrumental in accomplishing significant water quality improvements, but EPA is now relying more on the water quality aspects of the Act. This has led to a regulatory system focused on controlling pollutants to lower and lower levels with little consideration of the other sources of pollution and with insufficient scientific evidence to support whether the new pollutant levels will lead to actual water quality improvements.

NACWA is committed to changing this approach, with a focus on more holistic solutions centered around measurable environmental improvements, not just individual pollutant levels. This is particularly true with complex issues like nutrients, where non-point sources are the leading contributors in most watersheds. NACWA is pursuing these new approaches through our regulatory advocacy, but also through our substantial legal and legislative capacity.

- *Smarter Solutions for Wet Weather & Stormwater* - The CWA is fundamentally a dry weather statute, but often the most complex and expensive challenges clean water utilities face are related to wet weather, especially in the context of sewer overflows and stormwater. This has resulted in a perverse reality where one of the biggest regulatory and cost drivers for clean water utilities – and their local communities – is not addressed or even contemplated by the core CWA statutory construct.

NACWA is working to address this issue by exploring a new framework - for both sewer overflow issues and municipal stormwater regulations -- that allows clean water agencies to address wet weather in a manner that directs resources to environmental and public health concerns in the most efficient, effective manner possible. Integrated Planning can provide an important first step in this process, but NACWA is also pursuing regulatory and legal actions regarding CSOs, SSOs, blending, and MS4s to accomplish this goal.

- *A Focus on Compliance Assistance Instead of Enforcement* - One of the largest cost drivers for clean water utilities has been the massive expenditures mandated by EPA enforcement orders and consent decrees. Although enforcement may be necessary in certain situations, EPA should focus on assisting communities with compliance assistance first and only begin formal enforcement proceedings when efforts at compliance assistance have failed. Additionally, the cost of any enforcement actions required by EPA should be justified by measurable environmental benefits. NACWA is working to ensure EPA collaborates with communities to provide meaningful compliance assistance and that enforcement actions are tied to cost-effective, measurable environmental improvements.

- *Following Appropriate Administrative Processes for New Regulatory Mandates* - An increasing concern among clean water utilities is “rulemaking by other means”, where EPA has established new CWA regulatory requirements without going through the formal regulatory process with stakeholder input. This action can take a variety of forms, such as guidance memos or other “non-binding” documents that do not purport to create any new legal requirements but still establish new or change existing policies, or EPA pressure on individual states out of public sight to take state action that is consistent with EPA’s policy preferences.

NACWA is working to highlight where such actions are occurring and is pushing back through a variety of means, including regulatory advocacy with EPA, legal advocacy to challenge these actions in court, and engagement with Congress to exercise its proper oversight of the Agency’s action.