

News from WEFTEC 2011

I. Legislation

While there are a number of municipal wastewater/stormwater funding bills under discussion, including

- Water Infrastructure Financing Innovation Authority
- The president's Infrastructure Bank proposal
- Private Activity Bonds and
- Water Quality protection and Job Creation Act of 2011 (just introduced, Rep. Tim Bishop of Long Island is Democratic sponsor)

None of these are seen as likely to progress too far in the current Congress.

In contrast, bills aimed at stripping EPA of authority or the ability to spend money regulating certain issues are gaining a lot of media attention and some could pass. Water related "targets" of some of these bills include:

- EPA oversight on state decisions (such as SPDES permit conditions)
- State dredge and fill decisions
- State Water Quality Standards
- "Waters of the US" definition

Legislation giving EPA formal authorization to work with States and local water/wastewater utilities to set reasonable permitting related priorities (see the discussion below on EPA's evolving "Integrated Planning" NPDES permit initiative) could move, but its passage is not viewed as very likely.

The 2012 Farm Bill will pass (to avoid a 1948 era funding formula from kicking in), so there is a focus on improving the water quality aspects of this Bill.

Even EPA representatives agreed that the agency has a huge "target on its back" in terms of the current Congress and, especially, those running for federal elective office. The EPA budget for 2012 will likely be set by the "Super Committee" which is supposed to release its budget recommendations by November 23rd, if this Committee can come to an agreement. If the Super Committee doesn't reach agreement on the overall reductions in the federal budget, many expect a "blood bath" to occur as the House and the Senate work to establish an EPA budget.

II. Regulations

Revisions to Stormwater Permitting Requirements

EPA will be proposing a major overhaul of the stormwater permitting portions of the NPDES permitting rule (40 CFR §122.26). Most of the changes will relate to the MS4 and construction permitting programs, but their potential impact will be very far ranging. The updated regulation is required under a federal court order which includes a finalization date in November, 2011.

The date for the proposal has already slipped once. Currently the target date is December 15, 2011. However, this date may slip further because, as of October 18th, the draft regulations had not yet been submitted to OMB which has up to 90 days to review them prior to proposal. Some of the key changes will include:

- Expansion of the “MS4” foot print by either reducing the population size (perhaps down to 100,000 people) or by extending outward from existing MS4 boundaries, to include all areas within the same HUC12 watershed(s) as a designated MS4.
- For new developments or re-development projects needing a stormwater construction permit, a performance standard will be established for retaining a specified quantity of rain from each storm on site (its sounds like EPA is leaning toward requiring the volume equivalent of the 80th or 90th percentile storm for an area).
- “Larger” MS4 municipalities will have to develop and implement a plan to address existing stormwater discharges which are causing/contributing to a water quality problem and which lays out a plan to do ‘retrofits’ to reduce or eliminate the impact.
- Strengthened post-construction stormwater management requirements, focused on insuring that structures are properly maintained.
- States with equivalent or more stringent requirements can continue to use their requirements.
- Preamble will invite input on whether CSOs which are located within MS4 boundary areas should somehow be wrapped into the MS4 permit.
- “Principal” state road systems will be covered under a separate sector, which will require something similar to the 6 minimum measures required of MS4s.
- Evaluating additional provisions specific to the Chesapeake Bay watershed.

Next Generation Construction Stormwater Permit

A new Construction Stormwater Permit was proposed this past summer. It will be issued in final by early February 2012. While it will only be directly applicable in the few States etc. where EPA is the NPDES permitting authority, many states use the federal stormwater permits as the model for their permits.

Integrated Planning NPDES Permitting Flexibility for Municipalities.

EPA has announced to the Conference of Mayors, WEF, NACWA and others that it will be establishing a framework through which a municipality which is faced with multiple NPDES-related capital compliance expenditures can propose a priority-based elongated schedule for coming into full compliance. The elongated schedule could be as much as 20 to 25 years. Both EPA’s Office of Water’s Permitting group and the Office of Enforcement and Compliance Assurance (OECA) have issued joint letters stating that they are commitment to developing and implemented such an “Integrated Planning” process (letters From Nancy Stoner and Cynthia Giles (USEPA), reportedly dated July28 and September 20). EPA admitted that the “devil will be in the details,” its next step will be to issue a joint memo to the EPA Regions announcing this new approach. Following the notification to the Regions, EPA will release a “framework” document laying out the broad outlines of the new approach. The next step will be meetings held

at various locations around the country. While EPA expects to send the memo to the Regions by the end of October, it did not announce a date for the release of the draft Framework document. EPA made it clear that the intention was to allow municipalities to “sequence” their expenditures, but that there would be no rollback of requirements. EPA has not yet decided whether this is something that can be handled solely within NPDES compliance schedules, or if Consent Orders will be needed. Municipalities would propose (with justification) a sequencing order and timeframe. The new “integrated approach” will change how entities are allowed to prioritize wastewater and stormwater investments and allow for greater consideration of financial hardships that face cities.

SSOs and POTW Peak Wet Weather Flows

EPA held a two day workshop on SSOs and peak wet weather flows in July 2011. According to the federal register announcement for this meeting: "The workshop will include a facilitated discussion with representatives of organizations that represent POTWs, state NPDES permitting authorities, and not-for-profit environmental groups. Below is a brief summary of “Observations and Conclusions” concerning this workshop made by Nancy Wheatly (of CDM) one of the co-chairs of WEF’s Wet Weather committee:

Observations

EPA sees considerable consensus and wants to move forward.

EPA recognizes and values the industry contributions and commitment to improving performance

EPA stated clear position on secondary treatment regulations

- HRC systems which meet criteria allowed – not bypass
- Pathogens are **not** part of secondary criteria
- PEFTF must provide secondary for separate systems

Conclusions

Level of consensus on basic issues could lead to a new draft rule.

- There may not be staff to write it anytime soon
- Utilities will continue to be challenged to improve performance with the existing regulatory and enforcement climate.

Comparisons between the CSO Control Policy and a route to an SSO solution continues.

- The CSO Control Policy worked because EPA support development of a workable consensus and implemented it
- Similar commitment is not apparent for SSO solution.

Animal Feeding Operations

On October 14th EPA proposed a new reporting rule for CAFOs. According to the EPA web site (<http://cfpub.epa.gov/npdes/afo/aforule.cfm>):

EPA is proposing a rule that would require concentrated animal feeding operations (CAFOs) to submit basic operational information to EPA so the Agency can more effectively carry out its CAFO permitting programs on a national level and ensure that CAFOs are implementing practices to protect water quality and human health. The proposal is part of a settlement agreement reached with the Natural Resources Defense Council, Waterkeeper Alliance, and the Sierra Club. Under the proposed rule, EPA is co-proposing two regulatory options regarding which CAFOs would be required to submit information to the EPA. One option would require every CAFO to report this information to EPA, unless states with authorized NPDES programs choose to provide this information on behalf of the CAFOs in their state. A second option would require CAFOs in focus watersheds that have water quality concerns associated with CAFOs to report information to EPA.

EPA is requesting public comment on both options as well as alternative approaches to gather information. The proposed rule will be open for public comment for 60 days following publication in the Federal Register. The Agency plans to take final action on this proposal by July 2012.

Pesticide Application NPDES Permit

On April 1, 2011, EPA posted a pre-publication version of its draft final pesticide general permit for discharges of pesticide applications to U.S. waters. EPA will have its Final Permit out by the end of October, which is a court ordered deadline. This permit could become effective as soon as November 1st, 2011. States are also working to issue their version of these general permits in the same general timeframe.

Marine, Coastal & Great Lakes Protection Strategy

Draft to be issued in November 2011 with the Final being issued by April 2012.

Cooling Water Intake Structure Revised Regulations

Will be issued in final by July 2012.

Revised Steam Electric Power Plant Categorical Standards

Will be proposed in July 2012.

Dental Office Categorical Standard

Targeting recovery of mercury amalgam, draft rules will be proposed in February 2012.

Shale Gas Standards:

Currently, wastewater associated with shale gas extraction is prohibited from being directly discharged to waterways and other waters of the U.S. While some of the wastewater from shale gas extraction is reused or re-injected, a significant amount still requires disposal. As a result, some shale gas wastewater is transported to treatment plants, many of which are not properly equipped to treat this type of wastewater. EPA will eventually promulgate standards, based on demonstrated, economically achievable technologies, for shale gas wastewater that must be met before the wastewater can go to a treatment facility.

Coalbed Methane Standards:

Wastewater associated with coalbed methane extraction is not currently subject to national standards for direct discharge into waterways or for pre-treatment standards. Its regulation is left to individual states. For coalbed methane, EPA will be considering uniform national standards based on economically achievable technologies.

To ensure that these wastewaters receive proper treatment and can be properly handled by treatment plants, EPA will gather data, consult with stakeholders, including ongoing consultation with industry, and solicit public comment on a proposed rule for coalbed methane in 2013 and a proposed rule for shale gas in 2014. The schedule for coalbed methane is shorter because EPA has already gathered extensive data and information in this area, EPA will take the additional time to gather comparable data on shale gas. In particular, EPA will be looking at the potential for cost-effective steps for pretreatment of this wastewater based on practices and technologies that are already available and being deployed or tested by industry to reduce pollutants in these discharges.

Nutrient-related Water Quality Criteria

Ammonia – final winter 2012 - Fresh water acute and chronic criteria likely to be significantly reduced. For example:

Acute Criteria: At pH=8, where freshwater mussels are present, the criterion concentration ranges from 1.90 mg N/L at 30° C to 9.81 mg N/L at 0° C. At pH=8, where freshwater mussels are absent the criterion concentration ranges from 3.29 mg N/L at 30° C to 9.99 mg N/L at 0° C.

Chronic Criteria: At pH=8, where freshwater mussels are present, irrespective of whether fish ELS are present or absent, the criterion ranges from 0.186 mg N/L at 30° C to 0.817 mg N/L at 0° C. When freshwater mussels are absent, the values range from 1.33 mg N/L at 30° C to 2.32 mg N/L at 0° C at times when fish ELS are present, and from 1.33 mg N/L at 30° C to 5.87 mg N/L at 0° C at times when fish ELS are absent.

Changes based on the finding that fresh water mussels are more sensitive than salmonids.

Florida Nutrient WQS Federal proposal will not go into effect. State will be finalizing its own in January 2012.S

Conductivity – Proposed winter 2011

Chloride – Proposal/ Request for information (RFI) spring 2012.

Selenium - proposed/RFI fall 2012

Nutrients – EPA feels the science is “strong and compelling” that there are significant nutrient related water quality and human health impact. Not finding as much regional variability as it had expected. See attached tables.§

Revision to the Water Quality Standard Regulations

Proposal expected in early. It will address issues such as:

- When EPA will promulgate WQS after deeming State’s WQS/efforts to adopt new WQS not effective
- Highest attainable use
- Antidegradation
- Triennial reviews
- Variances
- Water Quality compliance schedules