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Proposal for a New NYS Pure Water's Program

Introduction

This proposal is designed to address the serious financial situation that municipalities face in complying with water pollution control laws, and in particular the diverse but unfunded mandates under delegated Clean Water Act programs. Water utilities have a proven track record of commitment to improving the environment and making sound investments for their communities in partnership with the State. With the investment of billions of ratepayer dollars, the waters of the State are significantly cleaner than they have been in many years. However, the regulatory challenges on the horizon are proving more challenging to implement, both from a technical and financial perspective. Without an overall strategic plan and a prioritization of investments, the water and wastewater sector will face the least-favored outcome, namely, a combination of ineffective and inefficient pollution controls and significant financial pressures that will be borne in large part by low- or fixed-income ratepayers. This is a national issue in which municipal bankruptcies or near collapses in areas such as Detroit, Michigan, Stockton, California, and Jefferson County, Alabama – are closely linked to multi-billion dollar unfunded clean water mandates. Clearly, the status quo is not working.

For that reason, this proposal is explicitly founded on alternatives to the command-and-control model that is currently in place. These alternatives include two major initiatives. First, comprehensive planning at the municipal and local level is driving investments in multi-disciplinary efforts to improve overall sustainability and to achieve a positive benefit/cost ratio measured under a triple bottom line approach. At the same time, the water utility industry is undergoing a sea-change, with a focus on planning and prioritization, a proactive and customer service oriented approach, a focus on costs and efficiency, and reconceptualization as a resource recovery industry.

Second, pre-Clean Water Act initiatives at the federal and state level – most notably, New York State's Pure Water Program – provided financial support and clear goals that laid the groundwork for the significant improvements. At that time, obvious and harmful pollution in Lake Erie, the Hudson River, and other waterbodies, combined with record-breaking droughts between 1962 and 1968, placed water issues on the public and political agenda. In launching the Pure Water Program, Governor Rockefeller recognized that despite the fact that 58% of the State's budget, or \$2 billion a year, was paid to the localities as State aid, "the burdens upon our urban areas are such that they have huge backlogs of need for waste treatment facilities."¹ That

¹ Lake Erie Conference, August 10, 1965.

program successfully met the challenges of that time and may inform a comprehensive program to address today's issues.

A third alternative, of course, would involve a return to the federal grants programs that existed before the conversion from block grants to state revolving loan funds in the late 1980s, but we have little hope for additional federal appropriations. In short, the State can and must chart its own course, and in so doing has an opportunity to be a national leader.

Historical Perspective: New York State's Pure Water Program (1960s)

- *Foundations for the program (early 1960s)*
 - Statutory exemption for municipalities' sewage works debt from the constitutional debt limit (1963).
 - Administration of water resources reorganized with all water programs put under the umbrella of the Water Resources Commission (WRC) in the Conservation Department; water pollution administration stayed in the Health Department while policy and programmatic functions of the Water Pollution Control Board were subsumed by the WRC. Public water supply regulations stayed with the Department of Health. The Office for Local Government also developed key policy proposals. (In 1970, of course, many of these programs were consolidated with the Department of Environmental Conservation.)
 - Comprehensive studies for sewage works and water supply by the Office of Local Government (e.g., Study of Needs for Sewage Works, Report No. 1, A New Ten-Year Program for Aiding Municipalities (Feb. 1962)).
- *Financial Assistance*
 - Significant grant program, backed by a \$1 billion Pure Water Bond Act to fund sewage treatment passed by New York State voters through a statewide bond issue referendum in the November 1965 election (Construction Grants Bond Act) (at the time, estimated statewide needs were \$1.7 billion, and the federal government provided only \$5 million per year, which was increased to \$10 million in 1965)². The proposal was for a 30/30/40 percent, state/federal/local, cost-share.
 - Tax incentives for new industrial pollution control facilities.
 - State aid for operations and maintenance of municipal sewage treatment facilities for up to one-third of the cost.
 - The State paid 100 percent of the cost of comprehensive sewage planning studies undertaken by municipalities on an area-wide basis.

² In testimony at the Hudson River Conference, September 28-30, 1965, Gov. Rockefeller testified about the inequity of federal funding and cited the example of New York City, which at that time had spent over \$226 million on sewage treatment facilities since the Federal-aid program but had received only \$2.7 million in Federal aid, or 1.2%

- Pure Water Authority established in 1967 to assist financing.
- *Leadership by example*
 - Abatement of pollution from federal and state facilities.
- *Scientific foundation*
 - Comprehensive, automated statewide monitoring system. The Stream Classification program was completed in February 1966.
 - Increased research on pollution problems.
 - State level water planning and pollution abatement services (at that time, \$15 million per year in the State Health Department budget).
- *Intensified enforcement of the water pollution control statute*
 - Permits issued for the first time with effluent limitations and total daily loadings, for a five-year term.
 - Secondary treatment required for class “C” or better waters, “E” and “F” classifications eliminated (best use for navigation and sewage/industrial waste disposal, respectively) (1967)
- *Partnership with municipalities on federal issues*
 - Governor Rockefeller testified at several national conferences and before Congress, successfully forcing changes to the 1965 and 1966 Federal Water Pollution Control Acts, including increased federal grants.
 - The Pure Water Program significantly shaped the Clean Water Act.

Proposal: a 21st Century Framework

Building on New York State’s historical leadership, the recognition that New York State’s water and wastewater resources and infrastructure provides a comparative economic advantage and is integral to economic development, and the EPA’s stated flexibility in developing its Integrated Planning Framework, we propose a [five]-part plan to modernize the regulatory framework and to address today’s pressing issues:

1. Create a True Partnership between the State and Municipalities

- Form an advisory committee, modeled on the CAFO working group, comprised of NYWEA/municipal appointments, and other representatives (preferably with a technical background), tasked with making sure regulation requirements are based on sound science. The committee would be charged with analyzing key administrative (including EPA) and legislative proposals pertaining to our industry and come up with recommendations and with organizing outside expert analysis, if necessary. The goal is to have all concerns addressed in one expert engineering and economic analysis, with the understanding that achieving consensus on all issues may not be a realistic goal.

- Develop flexibility through appropriate Use Attainability Analyses, flexible Water Quality Standards (e.g., a carve out for 48 hours after rainfall in CSO communities), and TMDLs
2. *Planning and Prioritization to Address the Most Significant Problems First*
- Partnership to prioritize water quality investments based on scientific data to achieve significant environmental benefits for water quality, that takes into account the impact on all environmental media, including air quality and greenhouse gas production
 - Prioritization informs 10 year plans for water quality improvements
 - Moratorium on piecemeal enforcement matters and permit modifications until Integrated Planning Frameworks can be developed
3. *Commitment to Transparency*
- Commit to providing permittees with draft proposals with sufficient lead time for technical evaluation of costs, feasibility, and alternatives, with the understanding that a full, open public comment is required and desirable.
 - Where uniform requirements and permit conditions are appropriate, presume that terms should be adopted through notice and comment rulemaking rather than through guidance and other ad hoc policy instruments.
4. *Financial Assistance to Ease Municipal Burdens*
- Reduce the cost of financing through the Environmental Facilities Corporation.³
 - Creation of new public infrastructure mechanism.
 - Exempt water and wastewater infrastructure investments from the "2% Property Tax Cap" calculations for municipalities.

While the tax cap is an important policy tool supported by member communities, inclusion of water and sewer rate increases associated with infrastructure investments may lead to dis-investment in water and waste water systems.

³ A package of reforms could include:

- Increase the proportion of grants;
- Provide additional subsidization;
- Lower EFC administrative fees and eliminate the State Bond Issuance Charge;
- Return excess fee income to municipalities for projects;
- Change the EFC statute to allow greater flexibility in the types of assistance provided (e.g., a surety bond in place of a reserve fund);
- Expand criteria for "hardship financing" to include major cities with substantial population below the federal poverty level; and
- Provide a longer-term and higher subsidy on drinking water SRF projects.

- In particular, rate increases that result from infrastructure investments required by orders on consent, asset management plans, or ultimately, approved integrated management plans, should be exempt from a community's tax cap calculation.

5. *Measures to Control the Costs of Construction and Operation*

- Expand design/build reforms under NY Works to municipally-financed water and wastewater projects.
- Examine or consider Wicks Law modifications.
- Reform the Civil Service Law to allow for flexible and/or consolidated titles, to provide limits on prevailing wage determinations, and to create a modern, flexible, skilled, and accountable workforce.