

Federal Update & National Stormwater Trends

2016 Southeast Stormwater Association Annual Conference

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NACWA

About NACWA

- National Advocacy Association for POTWs & MS4s
- Nearly 300 utility members nationwide
- 40% MS4
- National advocacy voice on municipal clean water issues
- Facilitate the National Stormwater Advocacy Network (NSAN) & State and Regional Exchange





How to best plug in smaller MS4 communities and states into national policy-making?

- Over a dozen state/regional stormwater associations, coast to coast (including SESWA)

The Network provides:

- quarterly meetings to discuss national stormwater issues
- opportunities to interact with EPA/Congress
- Ability to engage other organizations and NACWA to support local priorities



JOIN TOGETHER



Why NACWA? Why Now?

NACWA is the only organization whose sole purpose is to represent the interests of all public clean water agencies.

AS A MEMBER YOUR AGENCY WILL...

- Join fellow utilities across the country in shaping national water policy.
- Collaborate with the most dedicated, dynamic network of small, medium and large utility leaders in the country.
- Demonstrate world-class utility leadership and engage actively on legislative, regulatory and legal policies that deliver unmatched return on investment for your agency and community.
- Access unequaled technical information and utility management strategies.
- Celebrate utility achievements through national recognition and awards.
- Share successful strategies, address utility challenges and identify innovative opportunities through committees, conferences and professional development.

WITH EVERY UTILITY A MEMBER WE WILL...

- Elevate clean water as a top national priority.
- Change the clean water paradigm to allow for the flexible, affordable and innovative local approaches utilities need and demand.
- Access every congressional office and federal, regional and state agencies to ensure our collective voice is heard.



Join NACWA Today!

www.nacwa.org/join | membership@nacwa.org

NACWA
A Clean Environment for All People & Places



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Agenda

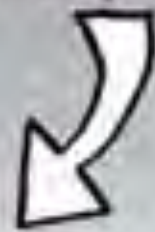
- Federal Regulatory & Legislative Updates
- Legal Developments
- Thoughts on SW Issues in 2017



CAN'T DO
ANYTHING



WON'T DO
ANYTHING



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The only time Congress moves quickly...



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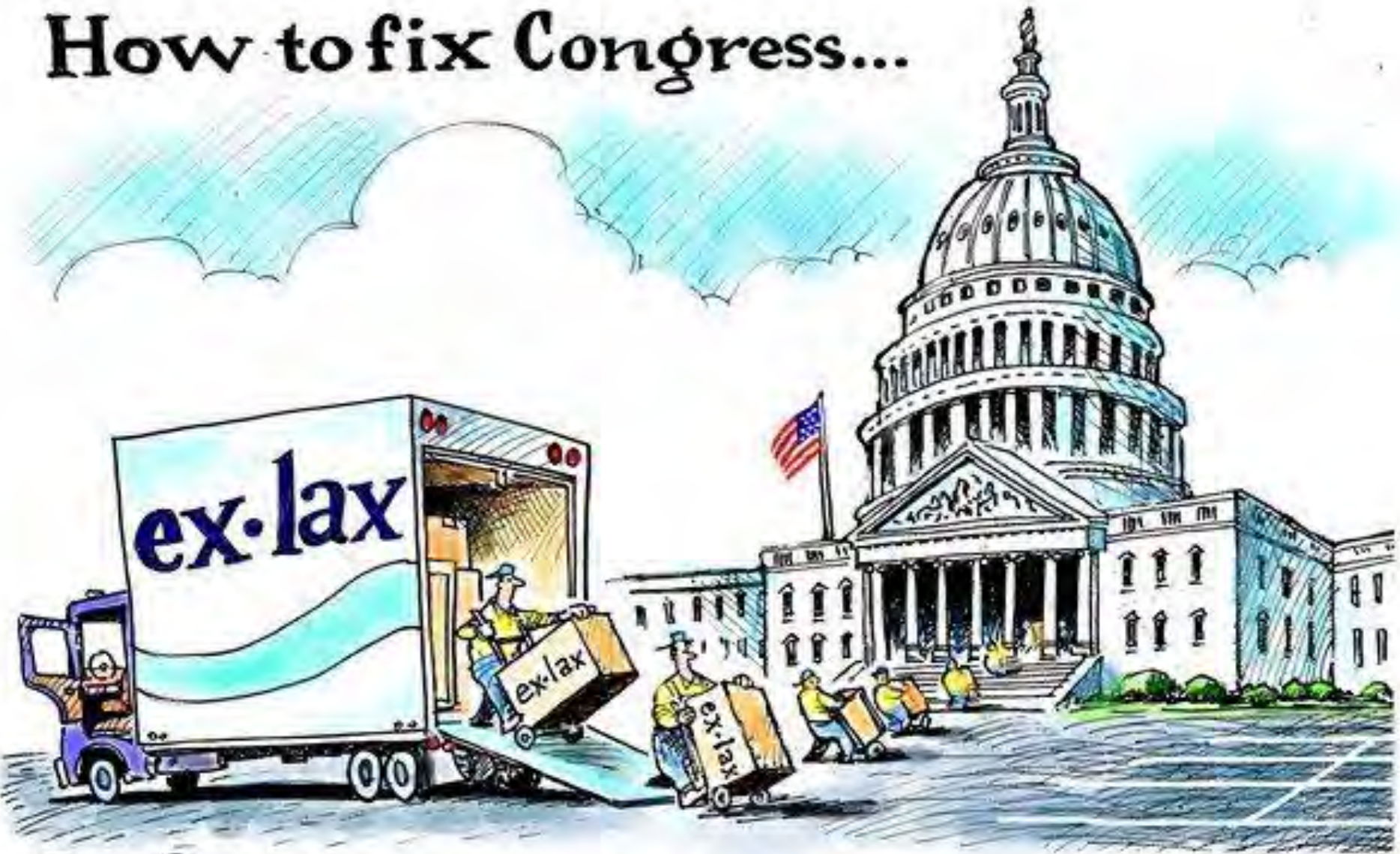


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How to fix Congress...



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Crisis Can Spur Action!



- Double the number of water related bills introduced in 2016 as in 2015
- Multiple Congressional hearings
- Significant policy interest in water issues
- Flint has elevated water in the national dialogue



Recent National Regulatory Activities



- EPA MS4 Phase II Remand Rule
- EPA/USGS document on hydrologic flow
- Planned EPA Stormwater Integrated Planning (IP) Framework



Phase II General Permit Remand Rule – Due Nov 17

- *What is it?*

- Response to Ninth Circuit's 2003 *Environmental Defense Center (EDC) v. EPA* ruling and 2014 petition
- Procedural changes relating to public participation & permit authority review
- EPA Proposal Released Dec. 2016
 - Option 1: “Traditional Approach” – all substantive requirements in permit
 - Option 2: “Procedural Approach” - public notice, opportunity for hearing on each NOI
 - Option 3: Hybrid/State Choice



Phase II General Permit Remand Rule

- *Public Comment Period Closed*
 - 74 Comments received
 - Strong majority of comments support Option 3
- *NACWA/NSAN Comments – Key Points*
 - Option 3 allows sufficient flexibility for permit authorities
 - Concerns with Option 1:
 - Removal of the term “narrative”
 - Effluent Limitations in General Permits and MEP
 - Incorporating TMDL WLA into General Permit
- *EPA has indicated that Final Rule will be based on Option 3*



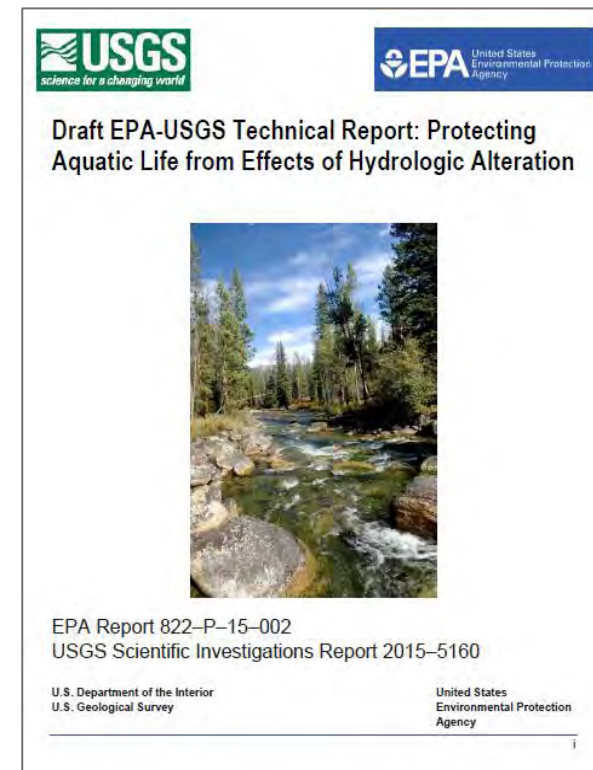
Phase II General Permit Remand Rule

- *Environmental Activist/NGO Position:*
 - Clearly define MEP
 - Must adopt onsite retention standards
 - BMPs must include performance requirements, benchmarks, monitoring schedule
 - EPA should reopen and modify existing permits that do not satisfy the rule's requirements
 - Support hybrid that requires both Option 1 & 2
 - Legal challenges to final rule?



“Protecting Aquatic Life from Effects of Hydrologic Alteration”

- *EPA-USGS Draft Technical Report:*
 - Presented as technical document, but included legal section on regulating flow as pollutant
 - Focus on returning things to natural flow regime
 - Key Concerns -
 - Policy document should not be presented as a technical report
 - Protects aquatic life use at the expense of other designated uses
 - Permitting implications



EPA Stormwater Framework

- Framework document to complement 2012 IP document
- Voluntary approach for communities to develop long-term SW management plans
- SWMPs would be incorporated into permits over multiple cycles
- No regulatory mandate, designed to encourage greater SW use of IP concepts



Water Resources Development Act (WRDA) of 2016

- House and Senate have passed different versions, now working to reconcile into final package for passage by end of year
- Both versions address Army Corps issues, but Senate version contains significant Clean Water Act (CWA) changes
- Closest we have come to significant CWA modifications in many years



Key Senate WRDA Provisions

- Reauthorizes Wet Weather Grant Program (\$1.8 B for CSO, SSO & SW)
- Directs EPA to promote Green Infrastructure
- Better coordination between ACOE projects and local SW management efforts
- Requires revision to EPA 1997 Financial Capability Guidance & new study on potential federal low income assistance program
- Advances Integrated Planning
 - Codifies EPA's 2012 IP Framework
 - Compliance schedules beyond a single permit cycle
- Clean Water Trust Fund





Potential Trust Fund Label design?



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WRDA Next Steps



- Next few weeks critical to reconcile House/Senate differences
- Inclusion of Flint aid helps improves changes of passage
- Contact your elected reps and encourage support!



Waters of the US Rule



- All legal challenges consolidated in Sixth Circuit
- Nationwide injunction in place
- Court not likely to hear case until Spring 2017
- Supreme Court vacancy looms large



Massachusetts General MS4 Permit Challenge



- Federal permit issued by EPA Region 1
- Includes onsite retention requirements, flow-based requirements, potential numeric limits, and requirement not to “cause or contribute” to exceedance of WQS
- Seeks to significantly broaden MEP standard
- Municipal & industry legal challenges filed – could be most significant SW legal case in decades. Likely to be handled in DC Circuit
- NACWA likely to participate



Other Legal Developments



- NGO challenge to current MSGP for stormwater discharges from industrial activities: settled
 - Stricter permit requirements punted to next permit cycle in 2019
 - NRC study
- Enforcement actions against MS4s
 - Federal consent decree lodged in Feb against Salt Lake County MS4



What Will 2017 Bring??



- Continued pressure from regulators, NGOs, or both
- Continued financial challenges in funding SW programs
- Time for a new wet weather CWA?





CONGRESS APPROVAL RATING

No matter how sophisticated the polling numbers, they never *quite* capture the mood of Main Street.



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Thank You!

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