

News from NACWA: Federal Update, Stormwater Trends and Opportunities

The Southeast Stormwater Association's 16th Annual
Regional Stormwater Conference



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The National Association of Clean Water Agencies

Friday, October 8, 2021



NACWA

A Clear Commitment to Our
Nation's Waters

- National trade association for public wastewater & stormwater utilities
- Represents over 340 public wastewater/stormwater utilities of all sizes from around the nation
- Leader in:
 - Legislative, regulatory, legal & communications advocacy on the full spectrum of clean water issues
 - Peer-to-Peer Utility Executive Sharing
 - Collaboration with National NGOs and State Equivalent Organizations

KEY STRATEGIC GOALS

- Elevate Clean Water as a National Priority
 - Parity with other Infrastructure Sectors
 - Pandemic = Water as an Essential Service/Workforce
 - Funding for other sectors = 60% (local): 40%(federal)
 - Funding for water = 95% (local): 5% (federal)
- Find Balance Between Regulatory & Enforcement Approach and Affordability/Integrated Planning
 - It's all the same ratepayer!!!
- Develop an Unmatched Network of Local Utility and Local Group Advocates



WATER IS A BIPARTISAN ISSUE

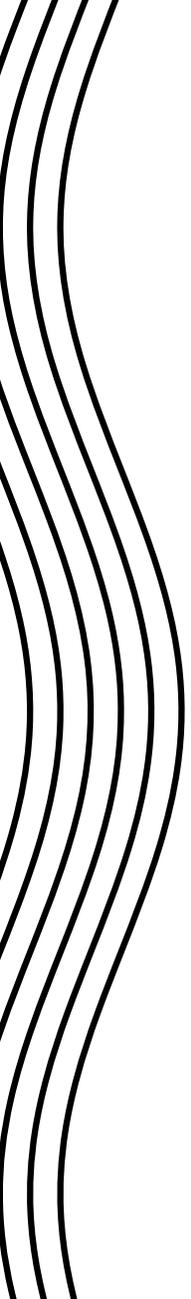
NACWA's strength is in our members.

NACWA is the nation's recognized leader in clean water advocacy for public utilities, made possible through the collective voice of our members.

Experience the value in membership through...

- **Legislative, regulatory, legal, and communications information and analysis.**
- **Peer-to-peer resources exchange and support.**
- **Interactive webinars and events.**
- **Recognition for your clean water utility's achievements through our national awards programs.**

Learn more at nacwa.org/join.



UPCOMING NACWA

Conferences & Events

National Clean Water Law & Enforcement Seminar

Charleston, SC | November 17 - 19, 2021

Water Utility Resilience Forum

Miami, FL | December 13 - 15, 2021

Learn More and Register at www.nacwa.org/events

2021 – A Busy Year Ahead

- **New political dynamic in Washington, DC**
 - New Biden Administration
 - Democrat controlled House and Senate with slim majorities in both chambers
 - Vice President Harris is the tie-breaking vote in the 50-50 Democrat and Republican split in the Senate
 - Several newly elected Senators and Representatives
 - Water Sector Advocacy is Crucial

2021 – A Busy Year Ahead *cont.*

- **Key Policy Issues**
 - Infrastructure investment/economic recovery opportunity
 - Water Ratepayer Assistance and Access
 - Possible additional COVID-19 relief legislation
 - Climate Resilience
 - Environmental Justice
 - PFAS
 - Increased regulatory agenda pushed by Congress and the Administration

Affordability – A Significant Regulatory Issue for the Water Sector

2021 Financial Capability Assessment/Affordability

- Signed pre-publication final version but not yet published in Federal Register
- Will update and replace the 1997 CSO – Guidance for Financial Capability Assessment and Schedule Development
- Two alternative approaches for assessing a community's financial capability:
 - Residential Indicator, Financial Capability Indicator, Lowest Quintile Residential Indicator (new), Poverty Indicator (new)
 - Calculation of poverty indicator and a dynamic financial and rate model that looks at impacts of rate increases to utility customers over time

PFAS Regulatory Issues to Watch Closely

EPA PFAS Council (EPC)

- Awaiting 100-day recommendations
- Sets this Administration's agenda on PFAS – could proposed new or modified actions under existing PFAS Action Plan

EPA PFAS Action Plan (2019); Several progress updates issued (2/2020; most recently 1/19/2021)

Effluent Guideline Program Plan 14 – recently finalized and focuses on 5 industries

- EPA intends to solicit additional data and information from PFAS manufacturers

Draft ELG Plan 15 –

- Identifies two industrial categories for pretreatment standards - PFAS

EPA 11/22/20 Memo on POTW/MS4 Monitoring and Best Management Practices

Headed to Scientific Advisory Board

- EPA conducting pilot studies on incineration

National Primary Drinking Water Regulations: PFOA/PFOS

- UCMRs, CCLs, MCLs

Hazardous Substance Designation?

- RCRA? CERCLA?
- Advanced Notice of Proposed Rulemaking (pre-publication notice signed Jan. 14, 2021; rescinded from Biden regulatory freeze)

Interim Guidance on Destruction and Disposal of PFAS

TSCA SNUR, Section 6, Section 8

Key Regulatory Issues

Environmental Justice

- Priority for this Administration
- Key for green infrastructure

Low-Income Household Water Assistance Program

- Within Department of Health and Human Services, Office of Community Services (modeled after LIHEAP)
- Funds released; State program implementation underway

Maui Guidance

- Draft Guidance issued December 2020; Finalized Jan. 14, 2021 – **RESCINDED on Sept. 16, 2021!!**
- Clarifies when a NPDES permit is necessary under the CWA with new “functional equivalent” analysis - **RESCINDED**

Lead and Copper Rule (LCR)

- Extends effective date for LCR to December 16, 2021
- EPA reviewing existing rule – room for modifications
- Virtual engagements underway

municipalities with integrated plans and the municipal and water quality benefits

- **Complementary Technical Assistance program offered by Environmental Finance Centers at University of Maryland and University of North Carolina runs through August 2021 – EXTENDED!!**

Flushed Wipes

- State legislation to require proper “Do Not Flush” labeling of wipes was successful in 2020 in Washington and is proceeding in 2021 in California, Massachusetts, and Oregon



Key Regulatory Issues

Combined Sewer Overflow (CSO) Permitting at End of Long-Term Control Plans (LTCPs)

- As utilities reach the end of their federally-mandated CSO LTCPs, what should be included in their discharge permits?
- Ongoing conversations with EPA

Nutrients

- EPA finalized its ambient water quality criteria recommendations for nutrients in lakes and reservoirs; first update to nutrient criteria in 20 years, moves away from ecoregional criteria – uses national model

Waters of the United States (WOTUS)

- EPA Announced intent to revise previous Administration's Navigable Waters Protection Rule – **pre-proposed rule stage**
- **Maintain existing exclusions for wastewater treatment systems, stormwater control features, reuse, and groundwater is key!**

Cybersecurity

Wastewater-Based Epidemiology: SARs-CoV-2

2021 Multi-Sector General Permit – Industrial Stormwater

- EPA signed and issued the 2021 Industrial MSGP on January 15, 2021 – regulatory freeze
- Biden Admin ok's and became effective March 1, 2021
- Universal benchmark monitoring – a particular pain point was not included in the final version
- Control measures for extreme flooding also not included
- PFAS not included – but likely next iteration

2022 Construction Stormwater General Permit

- Proposed on May 12, 2021; Comment period ended this summer
- New requirements for sediment and erosion control, training, dewatering

Emerging Contaminants:

- Microfibers and Microplastics



Water Sector Legislative Priorities

- Clean water as a key component of any comprehensive infrastructure legislation
- Increased federal funding for new and existing federal water infrastructure programs
- Better position utilities in protecting critical infrastructure against increasing extreme weather
- Establishing a permanent low-income water customer assistance program
- Ensure any legislative efforts to regulate emerging contaminants such as PFAS provide for an evidence and risk-based scientific and regulatory process



Further Addressing the Water Affordability Challenge

- Low-Income Household Water Assistance Program (LIHWAP)
 - Provides funding to help low-income households affected by COVID-19 pandemic pay their water and wastewater bills
- Overseen by the Department of Health and Human Services (HHS)
 - Grants to go out to states, territories, Tribes
 - HHS continues to set up program to get funds out to states (15% released to help cover administrative costs for states/implementation partners)
 - States have to develop a work plan and get approval from HHS to begin releasing funding to communities
- Program could be eventually housed at EPA



Comprehensive Bipartisan Infrastructure Package

- **Passed the Senate 69-30 in mid-August 2021**
 - **Awaiting a House vote in the coming weeks at which point President Biden is expected to then sign into law**
- **Roughly \$1 trillion package contains \$550 billion in new spending, of which \$55 billion will go toward clean and drinking water including:**
 - **\$11.713 billion in direct mandatory appropriations over the next five years for the Clean Water State Revolving Fund (CWSRF)**
 - **~ Half (49%) of this amount is required to be provided to communities and utilities in the form of 100% forgiveness of principal or grants. These SRF increases would be on top of annual additional baseline spending (currently \$1.639 billion) for the CWSRF that comes through the annual appropriations process**
 - **An additional \$1 billion through the CWSRF to address emerging contaminants including PFAS**
- **Additional provisions authorize and reauthorizes billions of dollars in new federal investment for clean water programs**

Fiscal year 2022 (FY22) Appropriations

- House passed FY22 Interior and Environment Appropriations bill with key annual funding for U.S. EPA and federal clean water programs
- Includes \$428.6 million Community Project Funding/earmarks for drinking water and clean water infrastructure
- Senate is working on its FY22 appropriations measures, which is expected to include Congressionally Directed Spending Requests/earmarks
- Congress is expected to pass a Continuing Resolution (CR) any day now (at the time of this recording on Sept 21, 2021) to temporarily fund the government at current levels from October 1 to December while a final FY22 appropriations package is agreed upon.



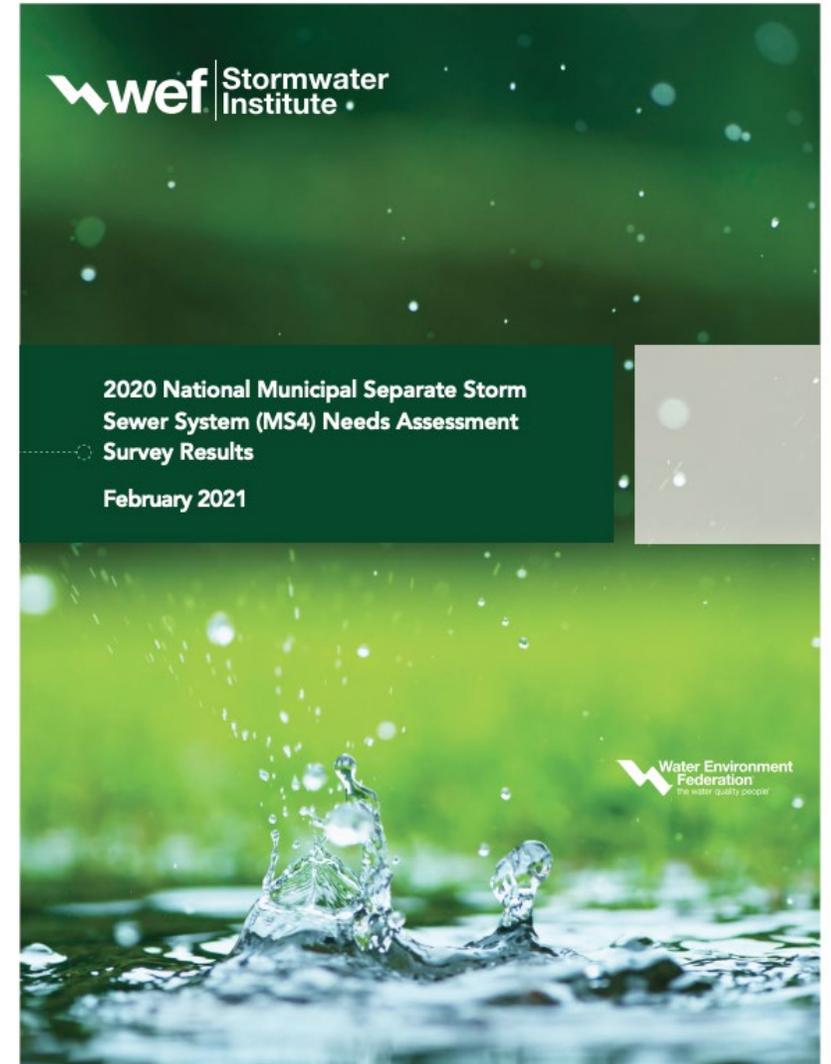
Budget Reconciliation Legislation

- \$3.5 trillion legislative package that includes the next phase of President Biden's Build Back Better Plan – focuses on social and environmental justice, climate change
 - Under a 51-majority vote threshold, as opposed to 60-votes needed
- House bill provides investments in clean water infrastructure including:
 - \$2 billion in mandatory appropriations for the Sewer Overflow and Stormwater Reuse Municipal Grants Program
 - \$495 million in Water workforce development grants for training and technical assistance
 - \$125 million for Alternative Water Source project grants
 - \$5 million for an updated Clean Water Needs Survey
 - Additional \$500 million for HHS Low-Income Household Water Assistance Program (LIHWAP)(\$1.138 billion already funded in COVID relief packages in 2020 and 2021)
 - Restores tax exemptions for municipal bonds (repealed as part of the 2017 Tax bill)
- Senate is expected to release their version of the bill soon



Serious Funding Gap for Stormwater

- WEF's Stormwater Institute – completed two iterations of the National MS4 Needs Assessment Survey (2018 and 2020)
 - Published most recent report in 2021
- Annual funding gap estimated \$8.5 billion
- Aging infrastructure, lack of funding or availability of capital, increasing or expanding regulatory requirements are driving the challenges
- EPA EFAB Report to Congress highlighted many of these concerns
 - Challenges for secure funding for stormwater, competition for larger projects, long-term funding gaps



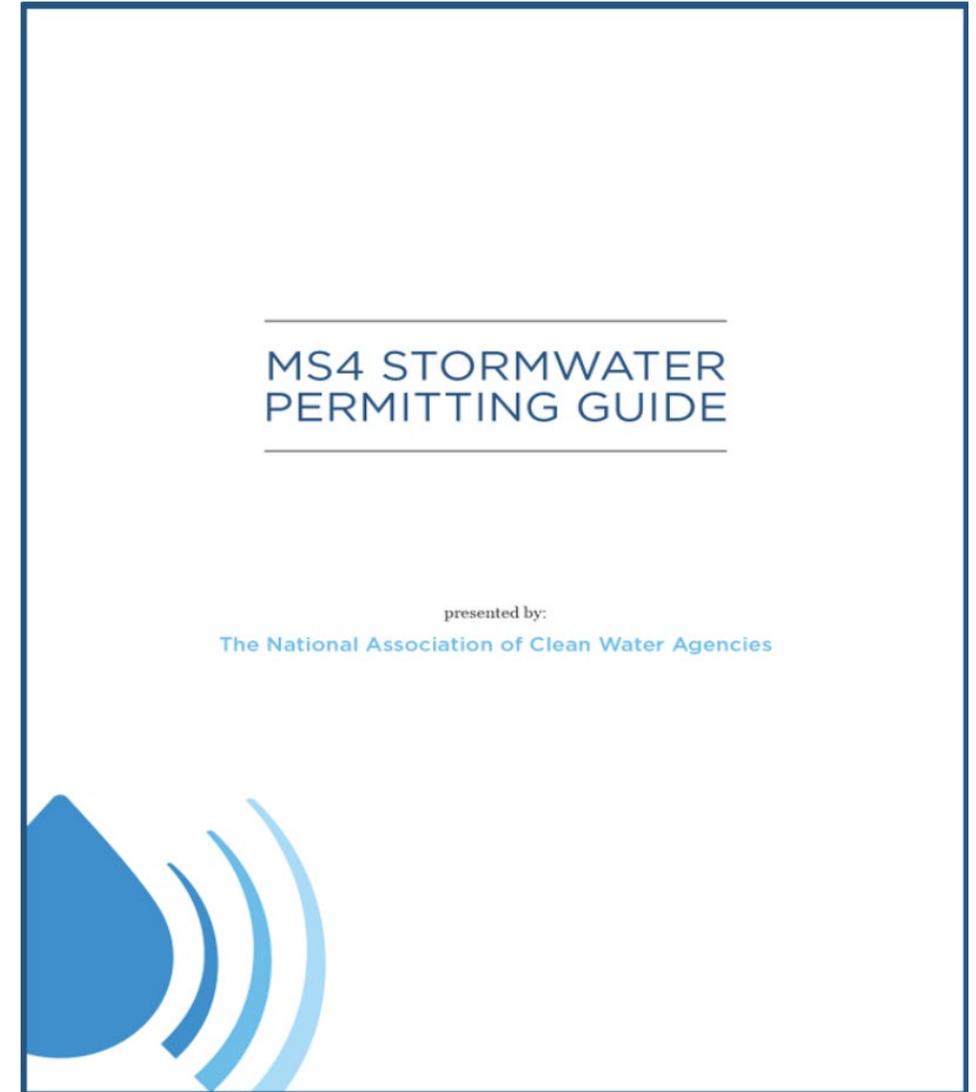
Sewer Overflow and Stormwater Reuse Grant Program

- Originally authorized over 20 years ago – never fully appropriated or funded
- EPA Finalized New Formula for Allocating Funding to States last year
 - Urban population, Total population, Clean Water Needs Survey, annual average precipitation
 - Urging the Agency to update and be consistent with CWNS (last was in 2012).
- Funded for the first time last year!!!
 - \$27m for FY2020
 - \$40m for FY2021
- Funding to go out to states
 - Can go to planning, design, construction costs
- Significant GRANT dollars on the table with budget reconciliation for this program
 - House - \$2 billion in mandatory appropriations



Stormwater Permitting and Screening Tool

- MS4 Stormwater Permitting Guide (2018)
- NACWA Stormwater Permit Screening Tool
 - Through a regulatory obligation lens, we screen permits to help municipalities better understand and navigate permit language and avoid potential landmines
 - Provide high-level individualized feedback for interested utilities
- Checklist includes:
 - Water quality standards – “cause and contribute” & exceedances
 - Compliance and development of implementation plans
 - Impaired waters, numeric limits, water quality trading, MCMs, MEP standard



To download the Guide, visit:
www.nacwa.org/stormwaterguide

Thank You!

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