

Federal Update and National Stormwater Trends

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Outreach



Overview

- A bit about NACWA
- National Update & Priorities
 - E-Reporting
 - Clean Water Rule
 - Permit Backlog
 - Phase II Rulemaking
- Legal Trends
- Environmental Touchpoints

NACWA and Stormwater



- National Association of Clean Water Agencies
- ~300 Public Agency Members
 - Serve the majority of U.S. population
- 40% Responsible for MS4

NACWA and Stormwater

- National Stormwater Advocacy Network

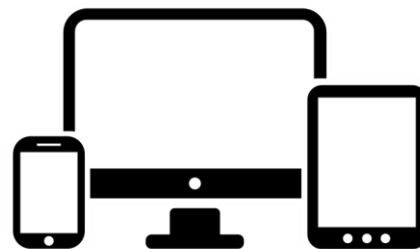
CASQA
CMSWC
CSC
FSA
KSA
MAMSA
OSA
ORACWA
MCSA
SESWA
TSA
VAMSA

- A need to broaden stakeholder base to influence national policy
- A forum for state/regional MS4 groups to coordinate with each other on key stormwater issues they are facing
- Tap those groups into advocacy developments at the national level through NACWA
- Non-technical; Dovetail with Stormwater Institute

National Update

Electronic Reporting Rule

- Finalized Sept. 24th
- Electronic submission of MS4 Program Reports will begin five years after the effective date of the final rule, in Phase II.



~~Waters of the US (WOTUS) Rule~~ Clean Water Rule



First lawsuit filed
6/29/2015

Final Rule Published in Federal Register
6/29/2015

Draft WOTUS Rule Proposed
3/25/2014

WOTUS --> Clean Water Rule
?????????

Effective Date
8/28/2015



2015

7/31/2014
First Comment Deadline

11/14/2014
Last Comment Deadline

5/27/2015
Pre-Publication Release

Today
10/9/2015
Rule Stayed by
U.S. Court of
Appeals for the
Sixth Circuit

Clean Water Rule, Legal Challenges

- NGOs, States and Interest Groups have filed suit against EPA
- More than half the states have joined together in various federal lawsuits opposing the rule
- Last week, the U.S. Court of Appeals for the Sixth Circuit issued an order staying implementation of EPA's Clean Water Rule nationwide.

"Federal overreach that violates the Clean Water Act, the APA, and the Constitution."

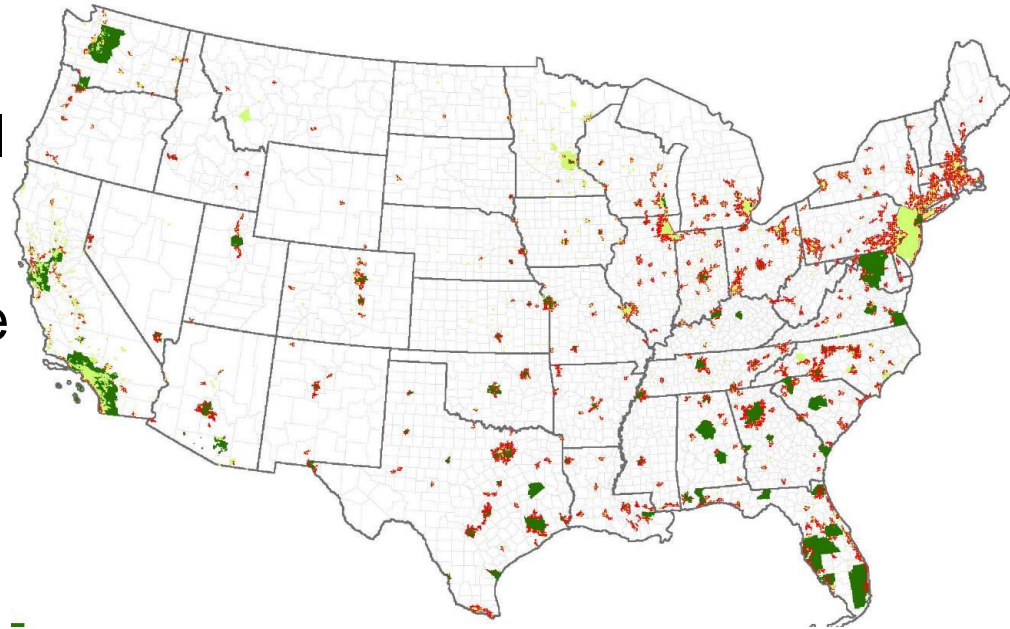
Challenging the rule on grounds that it isn't protective enough for the nations waters and wetlands.

"The final rule violates state sovereignty..."

"violates NEPA's procedural mandates...because it is arbitrary and capricious, violates the APA's procedural requirements."

National Update

- Individual Permits
 - 250 Individual MS4 permits cover 855 Phase I MS4s
 - 100 Individual MS4 permits cover ~106 Phase II MS4s
- General Permits
 - 54 General MS4 permits cover 6,589 Phase II MS4s
- High rate of expired permits

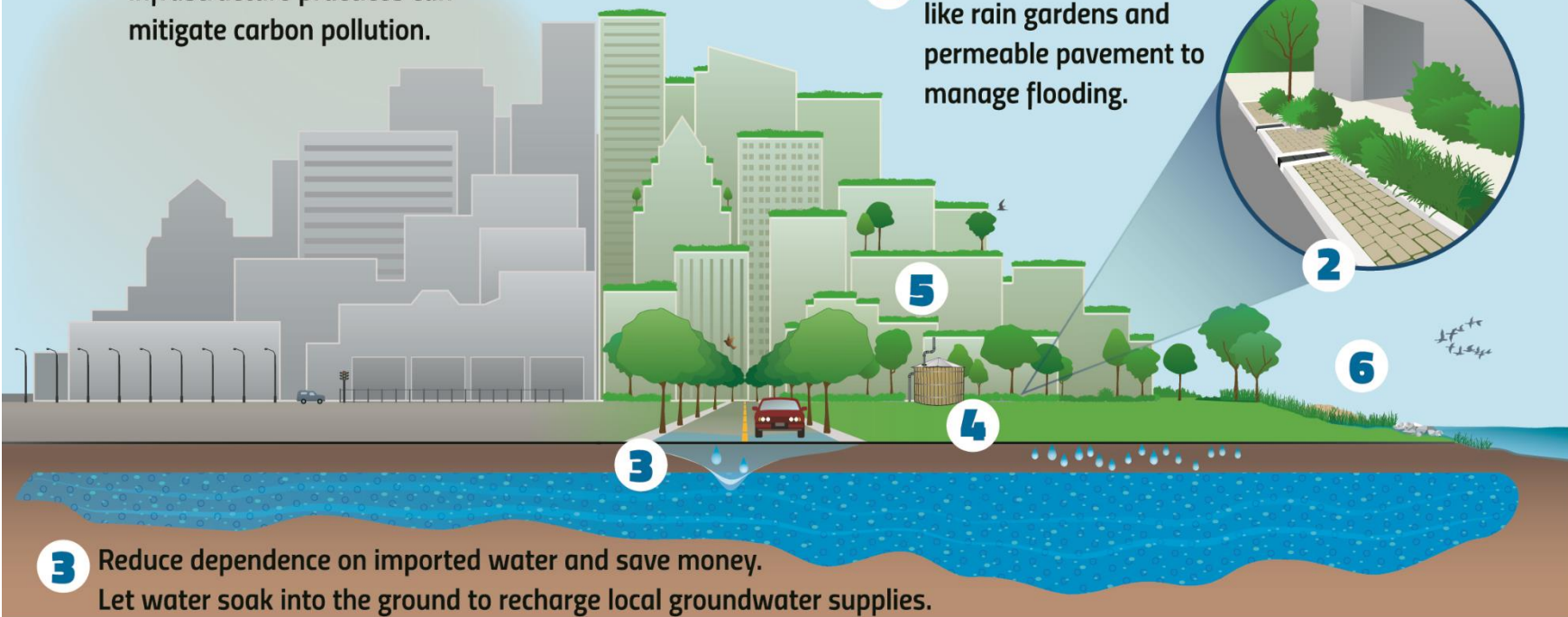
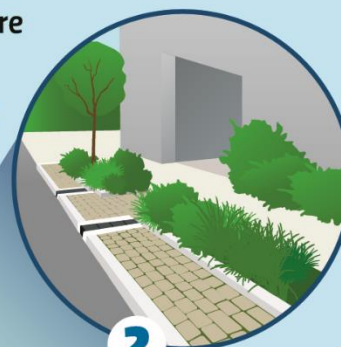


■ Phase I
■ Phase II
■ 2010 Urbanized Area (UA)
(new Phase II MS4s if not waived)

Green Infrastructure Builds Resiliency

1 Vegetation-based green infrastructure practices can mitigate carbon pollution.

2 Build green infrastructure like rain gardens and permeable pavement to manage flooding.



3 Reduce dependence on imported water and save money. Let water soak into the ground to recharge local groundwater supplies.

4 Keep water local. Capture runoff in cisterns and rain barrels to reduce municipal water use.

5 Plant trees and green roofs to mitigate the urban heat island effect.

6 Use living shorelines, buffers, dunes and marsh restoration to reduce the impact of storm surges.

Phase II Rule

- Ninth Circuit's 2003 *Environmental Defense Center (EDC) v. EPA* ruling and subsequent 2014 petition
 - EPA rulemaking requiring permitting authorities to review all NOIs submitted by small MS4s and provide opportunity for public review and comment on NOIs
- Proposed Rule: December 17, 2015
- Final Rule Due: November 17, 2016

Phase II Rule

- According to EPA, three options likely
 - **Option 1:** Traditional General Permit
 - NPDES authority defines permit requirements that establish actions necessary to meet the MEP standard
 - Doesn't require individual review of NOI's
 - **Option 2:** Procedural Requirements
 - Include requirements for permitting authority review, public notice of NOIs, and provide opportunity for public to request a hearing on individual NOIs
 - NPDES authority required to provide public comment period for each NOI
 - **Option 3:** Hybrid, aka "State's Choice"

“State’s Choice” Approach

State can select Option 1 or Option 2 approach.
Or a hybrid approach, pulling from both.

Example:

- Part of permit could be written specifically
- And part defined more by the permittee, thus subject to review and approval by permit authority

Phase II Rule

Any rule changes should:

1. Be narrow, with procedural focus.
2. Not attempt to define MEP.
3. Consider practical realities facing the Phase II program; increase state resources.
4. Respond to Court's requirements.

Legal Support

- Permit challenges
 - Individual permit provisions: effluent limits
 - State general permits

*NRDC, et al. v. New York
Dept. of Environmental
Conservation*

*Anacostia Riverkeeper,
et al. v. Maryland Dept.
of the Environment*

Supreme Court, Westchester County
Index No. 16132/10

COURT OF APPEALS
STATE OF NEW YORK

In the Matter of the Application of
NATURAL RESOURCES DEFENSE COUNCIL, INC., et al.,

In The
Court of Special Appeals of Maryland

No. 02199
September Term, 2013

BRIEF
HAM
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THE NE

MARYLAND DEPARTMENT OF THE ENVIRONMENT, *et al.*,
Appellants,

v.

ANACOSTIA RIVERKEEPER, *et al.*,
Appellees.

Appeal from the Ruling of the Circuit Court for Montgomery County
(The Honorable Ronald B. Rubin, Judge)

BRIEF OF AMICI CURIAE
MARYLAND ASSOCIATION OF COUNTIES,
MARYLAND MUNICIPAL STORMWATER ASSOCIATION,
NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES,
WET WEATHER PARTNERSHIP AND BALTIMORE COUNTY

AMY MC
RICHARD
HILARY
CARRIE
OF
JANUARY

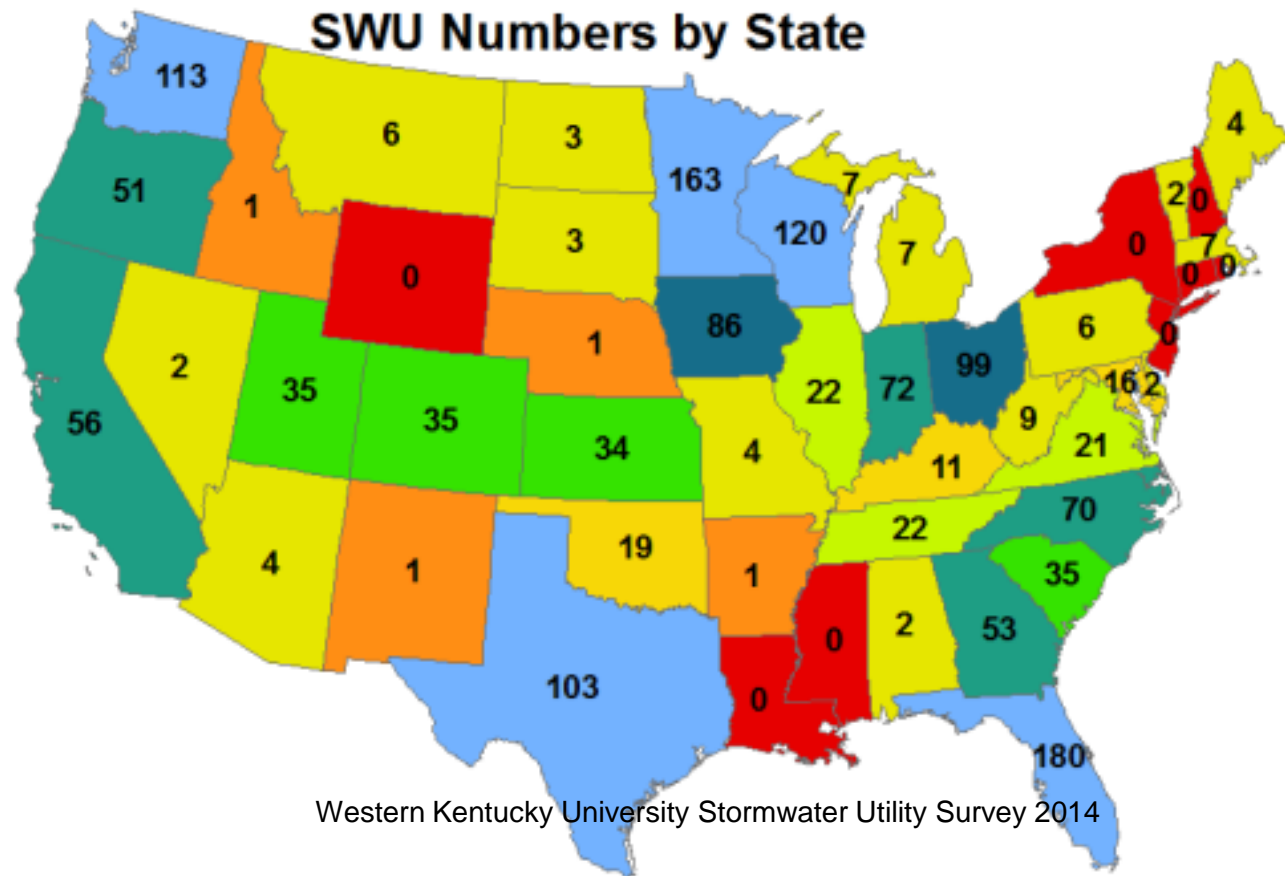
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Legal Support

- 7,000+ Phase I and Phase II MS4's
- ~1400 SWU's



Western Kentucky University Stormwater Utility Survey 2014

Legal Support



Fee Challenge: Top Trends

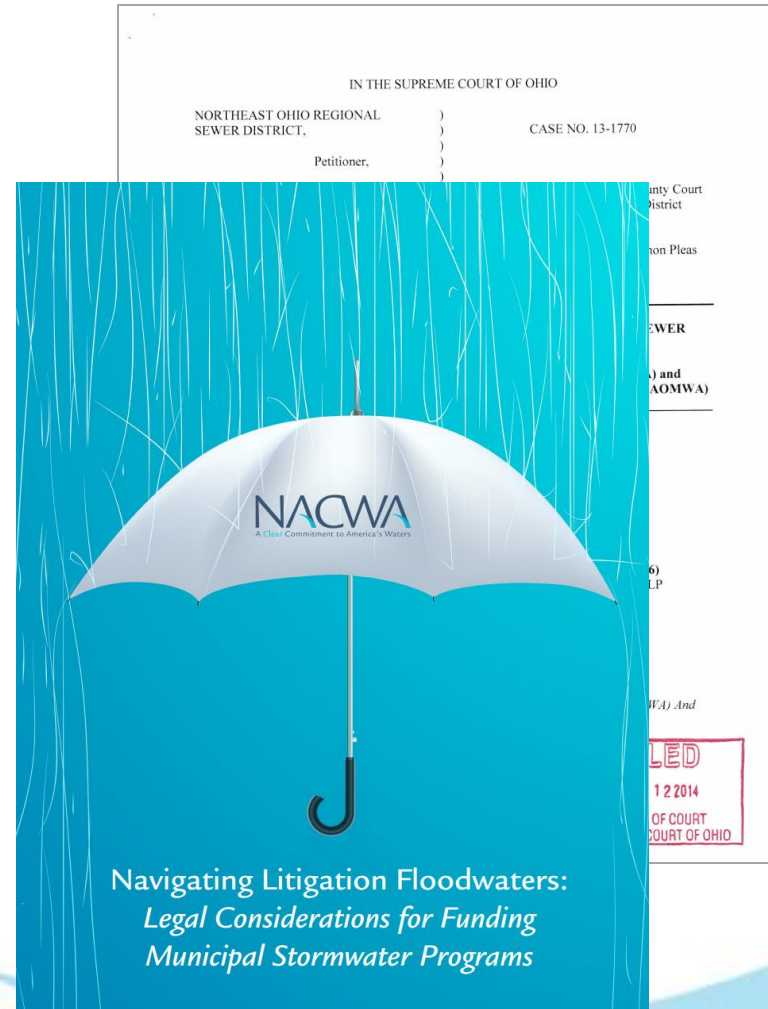
- Authority to Enact, Implement and Fund Program
- Legality of Financing Mechanism and Methodology
 - The majority of challenges to stormwater programs and fees involve the question of whether the stormwater charge is a user fee or a tax.

Legal Support

- NACWA Member communities facing challenges to their stormwater management programs and fees.

*NEORSD v. Bath
Township*

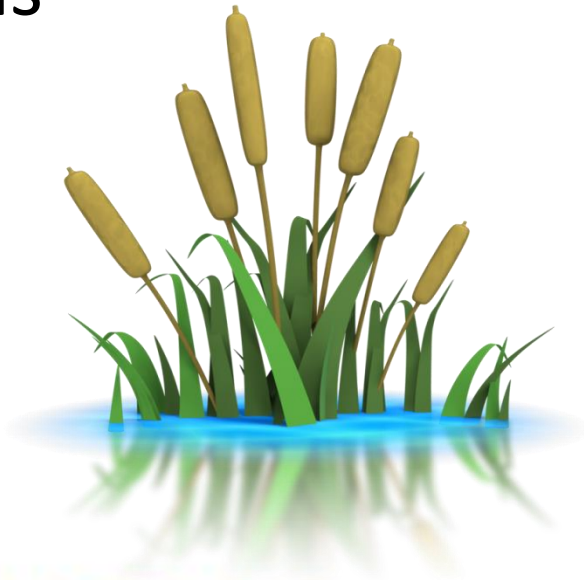
*Navigating Litigation
Floodwaters: Legal
Considerations for
Funding Municipal
Stormwater Programs*



Environmental Touchpoints

RDA

- Residual Designation Authority
- 2013 Regional Petitions (1,3, & 9)
- 2015 Urban Watershed Petitions
 - Baltimore, MD
 - Los Angeles, CA
 - Army Creek/Wilmington, DE
- NACWA facilitation



Environmental Touchpoints

Specificity via Phase II Rule

- 24 NGO groups submitted pre-proposal comments in early October
- Establish meaningful substantive requirements for all small MS4 permits
 - quantitative performance standards
 - Where necessary to establish effective water quality-based effluent limitations, allow a “hybrid” approach, whereby permittees are able to propose compliance plans, but with strong procedural safeguards.

Innovation & Utility of the Future

- NACWA facilitating discussion of new utility innovations in realm of green infrastructure, finance, technology, water reuse, and Big Data

What does it mean for stormwater?

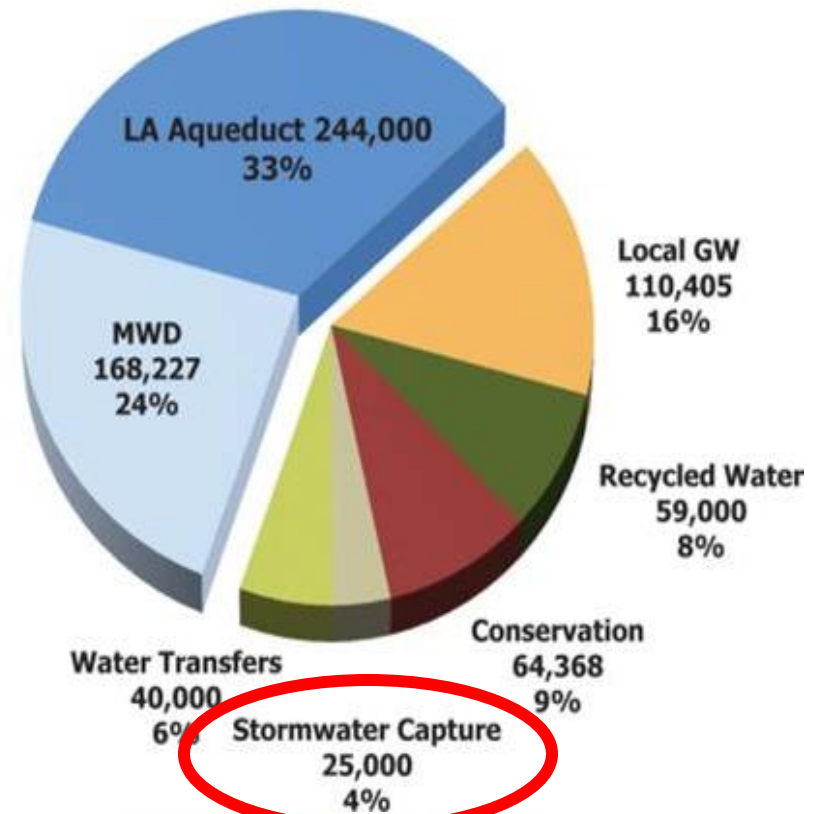
- Stormwater as a resource: harvesting
- Green Infrastructure: co-benefits

Innovation & Utility of the Future

Example: City of Los Angeles

- 4 watersheds
- ~100 mgd of dry weather runoff
- 3.8 billion gallon of stormwater (0.5" storm event)
- 7+ Billion Gallons captured by 2035

Fiscal Year 2034 - 35
Total: 711,000 AFY



Resilience

- Balancing and finding synergies between the MS4 program and flood management in the face of climate change



nk
October 6, 2015

Questions?

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NACWA
A Clear Commitment to America's Waters