

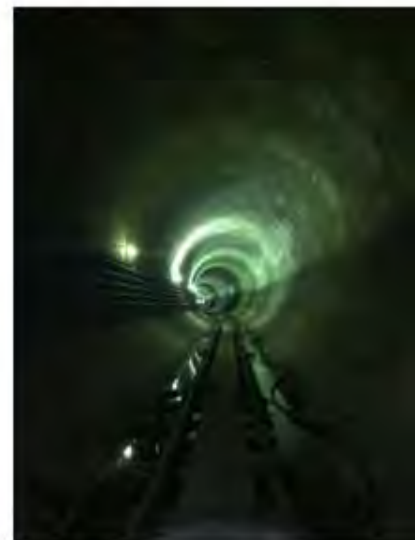


FEDERAL UPDATE & NATIONAL STORMWATER TRENDS

Emily J. Remmel, B.S., M.S., J.D.
Director, Regulatory Affairs

WHO ARE WE?

- National trade association for public wastewater and stormwater utilities
- NACWA represents over 300 public utilities of all sizes from around the country
- Recognized leader in legislative, regulatory and legal advocacy on full spectrum of clean water issues



NACWA'S SOUTHEAST UTILITY MEMBERS

- Alabama - 4 members
- Florida - 8 members
- Georgia - 8 members
- Kentucky - 3 members
- North Carolina - 7 members
- South Carolina - 8 members
- Tennessee - 6 members
- Mississippi - 1 member



TOTAL 44 MEMBERS

NATIONAL POLICY DEVELOPMENTS - 2018

A VERY BUSY YEAR FOR THE CLEAN WATER SECTOR

LEGISLATIVE

FEDERAL BUDGET/FUNDING
TAX REFORM
WATER RESOURCES DEVELOPMENT ACT
FEDERAL INFRASTRUCTURE PACKAGE
INTEGRATED PLANNING
AFFORDABILITY
FARM BILL

REGULATORY

EPA REGULATORY REFORM
WOTUS
WET WEATHER/BLENDING
CWA/SDWA INTERSECTION
- LEAD AND COPPER RULE
- PFAS
NUTRIENTS

LEGAL

MS4 PHASE II LITIGATION
DIRECT HYDROLOGIC CONNECTION LITIGATION



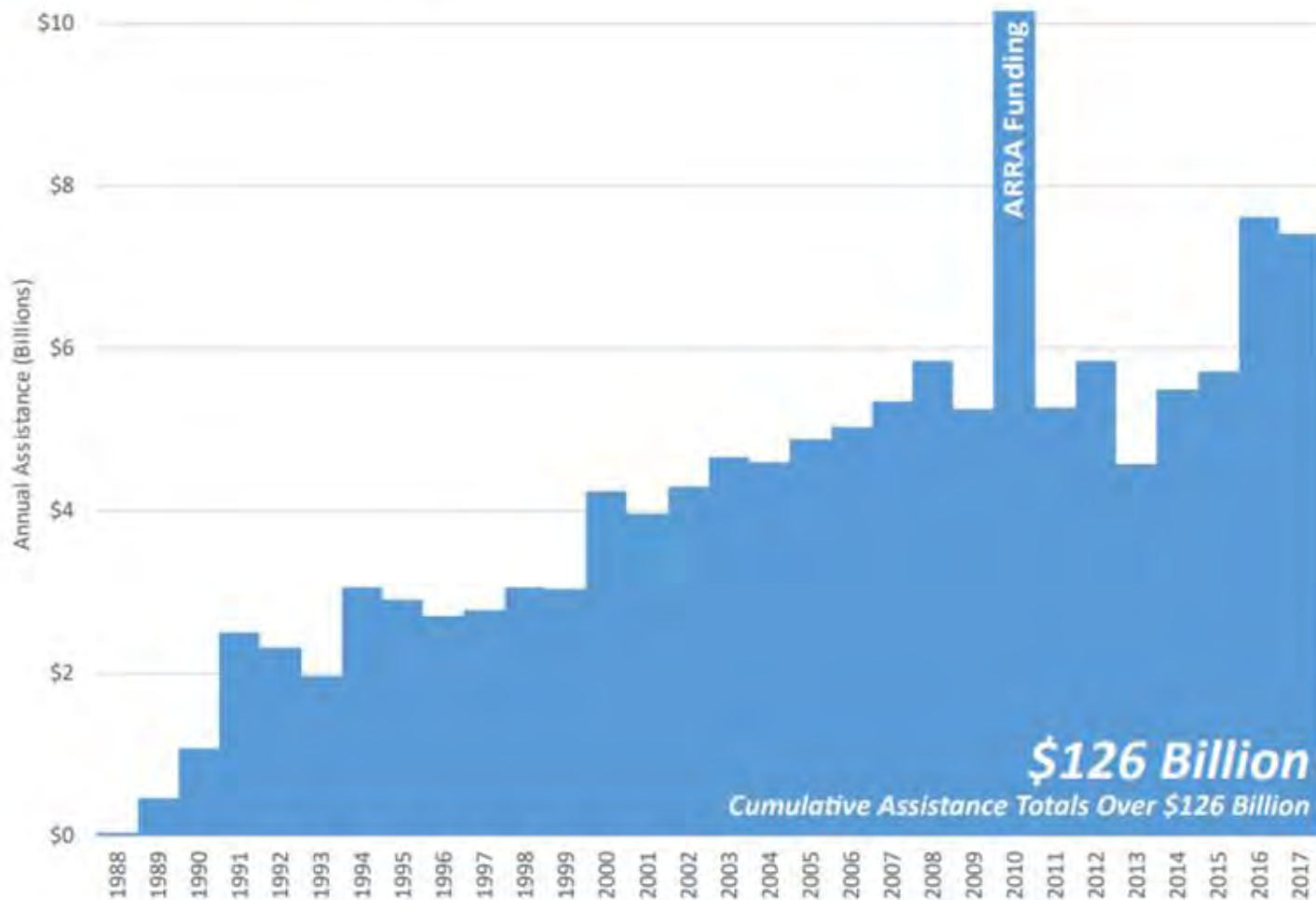
LEGISLATIVE UPDATE



OMNIBUS + CONTINUING RESOLUTION

LEGISLATIVE UPDATE

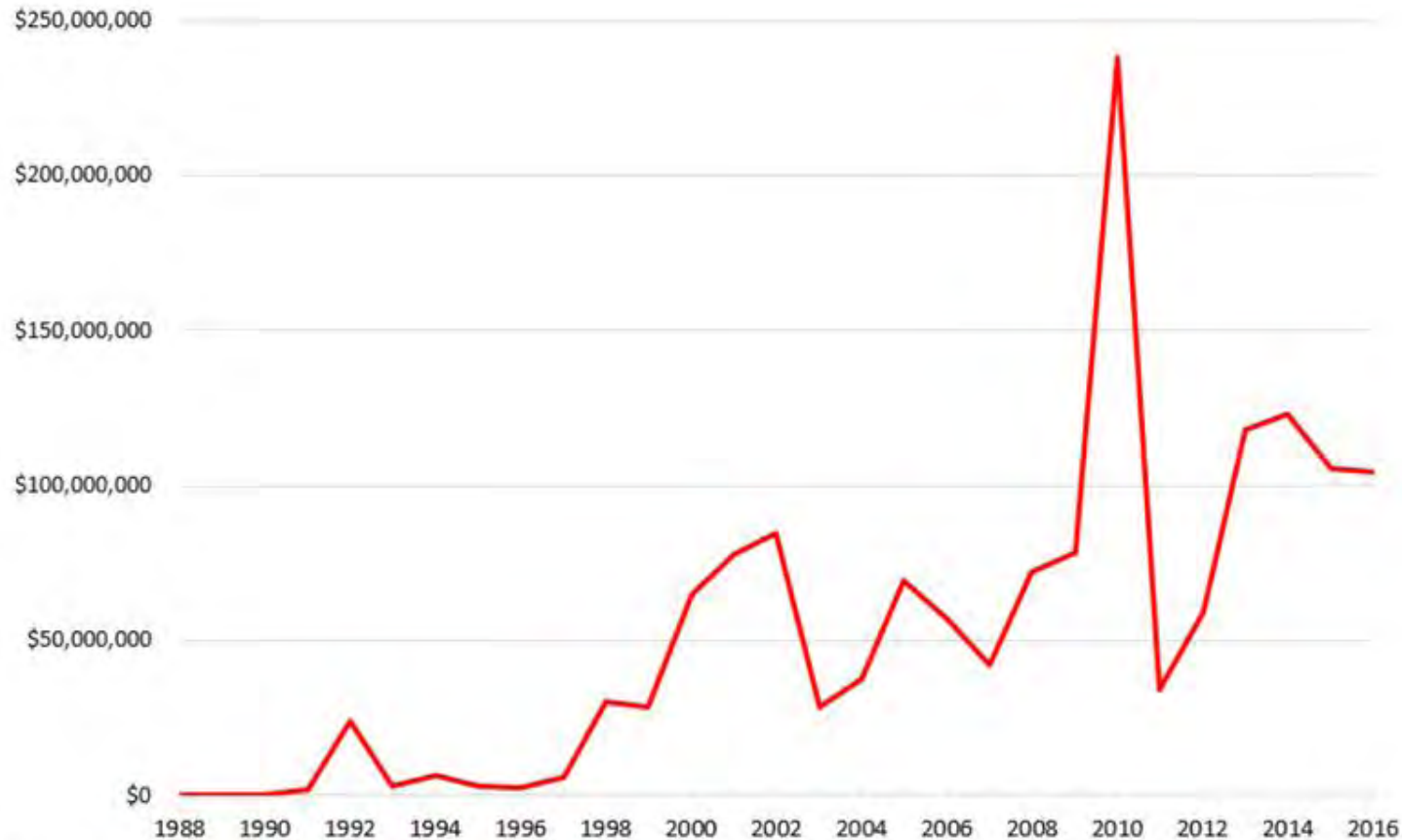
CWSRF ANNUAL ASSISTANCE 1988 - 2017



SOURCE: EPA'S 2017 ANNUAL REPORT ON CLEAN WATER STATE REVOLVING FUND PROGRAMS

TOTAL NATIONAL CWSRF FOR STORMWATER - 1988 TO 2016

Average 1.10% CWSRF goes to Stormwater Management



DATA FROM EPA, SEPTEMBER 2018



FEDERAL BUDGET - FY2019

OMNIBUS + CONTINUING RESOLUTION

LEGISLATIVE UPDATE



WATER RESOURCES DEVELOPMENT ACT

FEDERAL BUDGET - FY2019

OMNIBUS + CONTINUING RESOLUTION

LEGISLATIVE UPDATE

TAX REFORM

WATER RESOURCES DEVELOPMENT ACT

FEDERAL BUDGET - FY2019

OMNIBUS + CONTINUING RESOLUTION

LEGISLATIVE UPDATE

REGULATORY UPDATE

- Massive effort to cut staff levels - not seen since 1980s
- Water Office fully staffed at the political level
- Pruitt's priorities:
 - WOTUS
 - Lead & Copper Rule
 - PFAS
- Focus Areas:
 - Rule of Law
 - Cooperative Federalism
 - Back to Basics
- Compliance Assistance v. Enforcement





EPA ADMINISTRATOR CHANGE



REGULATORY DEVELOPMENTS

EPA Remains Active on the Regulatory Front

DENTAL AMALGAM RULE - FINAL

CSO NOTIFICATION - FINAL

NUTRIENT SURVEY - COMING SOON...

BLENDING - COMING SUMMER 2019

CYANOTOXINS - WAS EXPECTED SUMMER 2018

CONDUCTIVITY - UNCLEAR

SCIENCE TRANSPARENCY - RECENTLY CLOSED

COST & BENEFITS - RECENTLY CLOSED

WOTUS: STORMWATER EXEMPTION

"Stormwater control features constructed to convey, treat, or store stormwater that are created in dry land."

- 2015 Clean Water Rule*

* on hold until SCOTUS decision on National Association of Miners v. Department of Defense; pending President Trump's Executive Orders directing Agency's to withdraw WOTUS and the two-step revocation process; and EPA and USACE finalized rule for a new WOTUS definition effective February 6, 2020 and more recently the August 16, 2018 decision which reinstated the 2015 Clean Water Rule in 26 states.

STORMWATER: PHASE II REMAND RULE

NACWA has long-advocated that:

- The Rule remain procedural in nature - no substantive changes to MS4 program
- Protect the Maximum Extent Practicable Standard - maintain the max flexibility for individual communities

NACWA is tracking issues across the country as NPDES-authorized states begin implementing Rule with newly issued permits:

- Oregon
- Maine

STORMWATER: MA/NH MS4 LITIGATION

Central concern: Does EPA have the ability to impose MS4 permit requirements that are beyond the maximum extent practicable?

1. General prohibition:

"Permittee **shall reduce** the discharge of pollutants such that the discharges from the MS4 **do not cause and contribute to an exceedance of water quality standards**"

2. Waterbody with approved TMDL

3. Water quality limited waterbody/No TMDL yet

4. MS4 violators must meet WQS within 60 days

GROUNDWATER LIABILITY LITIGATION

Direct Hydrologic Connection Theory

Whether a discharge to groundwater can trigger Clean Water Act liability?

Active cases:

- *Hawaii Wildlife Fund v. County of Maui* (9th Circuit)(permitted UIC well from POTW)
- *26 Crown Associates, LLC v. Greater New Haven Regional Water Pollution Control Authority* (2nd Circuit) (Basement backup case)
- *Upstate Forever v. Kinder Morgan* (4th Circuit)(petroleum leak from underground pipeline)
(recently held not a CWA violation)
- *Tennessee Clean Water Network v. Tennessee Valley Authority* (6th Circuit)(unlined coal ash pond) (recently held not a CWA violation)

GROUNDWATER LIABILITY LITIGATION

Why this matters

Green infrastructure is designed to reduce and treat stormwater at its source by restoring the natural processes of plant and soil absorption, filtration, and groundwater percolation.

Uncertainty, if this moves forward, whether NPDES permits requirements apply; could impede/deter beneficial green infrastructure.

MS4 STORMWATER PERMITTING GUIDE

presented by:

The National Association of Clean Water Agencies



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

Join the NACWA family. Join the discussion.

Small and medium sized wastewater &
stormwater utilities serving populations less
than 75,000

\$750 to \$1,000/year

www.nacwa.org/membership



UPCOMING EVENTS

- **National Clean Water Law and Enforcement Seminar**
 - San Diego, CA - November 14-16, 2018
- **NACWA Winter Conference**
 - Albuquerque, NM - February 5-8, 2019
- **Water Week 2019**
 - Washington, DC - March 31-April 6, 2019
- **National Water Policy Fly-In**
 - Washington, DC - April 3-4, 2019



**THANK YOU
SESWA!**



PERMEABLE PAVEMENT!



Emily Remmel
eremmel@nacwa.org
202.533.1839

