

# WEF Government Affairs Updates July 19, 2017

- Jeff Hughes, Director, UNC Environmental Finance Center
- Erin Riggs, Legal Advisor, UNC Environmental Finance Center
- Claudio Ternieden, Sr. Dir. of Gov't Affairs
- Steve Dye, Legislative Director



## **Presentation Overview**

- Affordability Report
- Congressional Agenda
- Regulatory Update
- WEFTEC 2017



# WEF Letter to Pres. Trump

- Advancing smart regulations and policies by using sound science and technical merit
- Accelerating and expanding water infrastructure investment
- Bolstering research & development to find solutions to pressing challenges in water
- Developing high skill construction and water sector jobs
- Assuring local water systems are affordable and robust



# Pathways to Affordable Water and Wastewater Services





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UNC SCHOOL of GOVERNMENT

How you pay for it matters

Supporting the fair, effective, and financially sustainable delivery of environmental programs through:

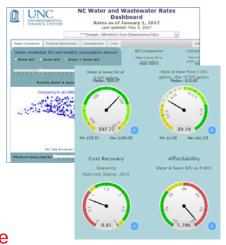
- Applied Research
  - Fees and finance
  - Regulatory approaches
- Teaching and Outreach
  - Stormwater Listserv
  - Stormwater finance
- Program Design and Evaluation
  - Dashboard
  - Implementation advising
  - Capital planning tools



# Some of the many barriers to universal affordability:

- Increasing infrastructure/revenue needs
- Household incomes for many stagnant or falling
- Lack of national or state level assistance programs
- Challenges to funding local customer assistance

programs









https://efc.sog.unc.edu/pathways-to-rate-funded-customer-assistance

Water Environment Federation

## Funders/Steering Committee













## Research Team





Independent Legal Experts
Scott Rubin, Advisor
Roger Colton, Advisor



### Can a Utility Use its Primary Revenue Source (Rate Revenue) to Fund a Customer Assistance Program

- 52 state/territory legal snapshots
- Nine case studies of well funded customer assistance programs
- Analysis of other sector approaches



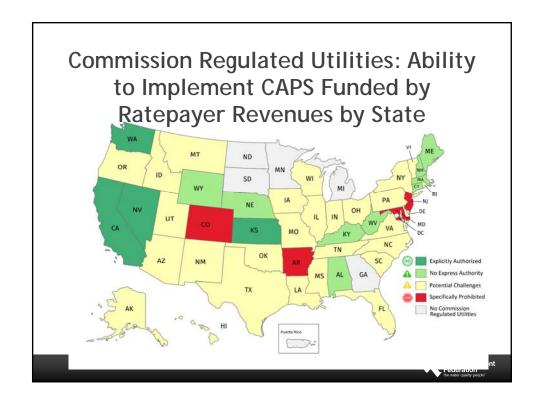
Analysis of international approaches











## **Example Snapshot: Wisconsin**

Note: This is an except from a larger report, "Navigating Loyd Pathways to Bate-Funded Customer Assistance Programs: A Guide for Water and Wastewater Utilities." To access the whole report, go to https://ejc.cog.usc.edu/pathways-to-rate-funded-customer-assistance

#### Wisconsin

Water and wastewater utilities in Wisconsin fall under several rate setting regulatory systems. However, Wisconsin is unique in that it is the only state in which all municipal-owned water utilities are regulated by the state utility commission. Unlike in most states, where government-owned utilities are treated differently than private water companies, in Wisconsin the main regulatory differences lie between water utilities and

#### Commission-Regulated Utilities

Under Wis. Stat. § 196.02, the Public Service Commission of Wisconsin (PSCW) regulates the water rates of any public utility providing water to the public for domestic, commercial, or industrial purposes, including municipal-owned water utilities.<sup>34</sup> Regional water authorities, cooperatives, water trusts, and private wells are not regulated by the PSCW. Under Wis. Stat. § 66.0815(2)(a), the PSCW has "Jurisdiction over the



State Population (2016): 5,778,708

Median Annual Household Income (2015): \$53,357

Poverty Rate (2015): 13.0%

Typical Annual Household Water and Waste Mater Expenditures (2015): \$675

Wisconsin has 1,057 community water systems (CWS), of which 455 are privately owned and 979 serve populations of 10,000 or fewer people.

Wisconsin has \$82 which owned treatment modes for

Wisconsin has 582 publicly owned treatment works facilities (POTWs), of which 505 treat 1 MGD or less. 107,469 people are served by privately owned CWS; 3,973,370 are served by government-owned CWS; and 4,349,081 are served by POTWs.



# As an example...Wisconsin

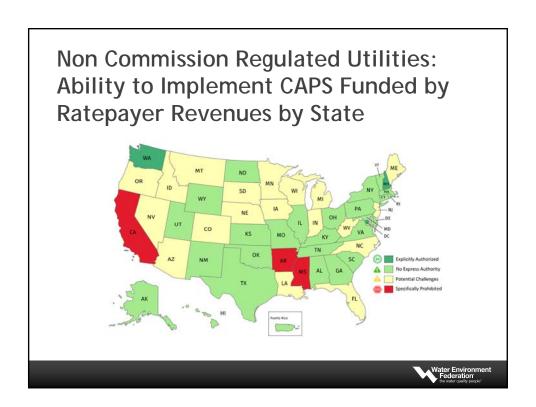
- Wisconsin is unique, because all municipal-owned water utilities are regulated by the state utility commission and the main regulatory differences in the state lie between water utilities and wastewater utilities.
- Rates must be "reasonable and just"
- No charging more or less compensation for any service rendered than charged or received for a like service
- Customers prohibited from knowingly soliciting or receiving "any rebate, concession, or discrimination" from regulated utilities.
- Municipal public utility rates must be "uniform for like service in all parts of the municipality."
- Wastewater utility regulation is primarily a "voluntary decision on the part of the municipality."



### Wisconsin Case Law

• In 2002, in *City of Madison v. Pub. Serv. Comm'n of Wisconsin*, the court upheld the PSCW's denial of the city's proposed rate increase, which would have been used to subsidize the cost of replacing the remaining customer-owned lead laterals in the city. Despite the city's emphasis on the overall benefits to all city residents that could be had by replacement of the lead laterals, specifically, avoidance of fines of up to \$25,000 per day for noncompliance with EPA regulations, as well as prevention of risks to community waters if the alternative chemical method were to be used, the PSCW instead relied on the fact that the "proposed rate increase would be used to benefit a select group of customers by providing a subsidy for the replacement of the privately owned lead laterals, which those customers are responsible for maintaining and repairing."





## **Options for Moving Forward**

- 1. Introduce statutory language that addresses rate funded CAPs in clear, unambiguous terms
- 2. Develop an argument for why a CAP conforms to existing statues and is not affected by perceived limitations
- 3. Develop alternative programs that do not rely on customer rate revenue



### For More Information

Jeff Hughes or Erin Riggs

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www.efc.unc.edu



Any questions??



# Legislative Issues

- FY18 Budget
- Tax Reform
- Infrastructure Funding
  - CW SRF
  - WIFIA
  - Tax-Exempt Muni Bonds
  - P3
  - Buy American
  - Recent Bills



Agency Multiple values						
	FY18 Request	FY 2017 CR/enacted	FY 2016 Enacted	FY18 Change from FY17 CR/enacted	Percent Change FY18/FY17	• Cuts total
Defense	\$574.0	\$521.7	\$521.7	\$52.3	10.0%	\$3.6
Veterans Affairs	\$78.9	\$74.5	\$71.6	\$4.4	5.9%	Trillion
HHS	\$65.1	\$77.7	\$84.6	(\$12.6)	-16.2%	ITHIIOH
Education	\$59.0	\$68.2	\$68.3	(\$9.2)	-13.5%	over 10
Homeland Security	\$44.1	\$41.3	\$41.1	\$2.8	6.8%	010110
HUD	\$40.7	\$46.9	\$37.5	(\$6.2)	-13.2%	years
Energy	\$28.0	\$29.7	\$29.6	(\$1.7)	-5.7%	•
Justice	\$27.7	\$28.8	\$28.7	(\$1.1)	-3.8%	
State and USAID	\$27.1	\$38.0	\$37.9	(\$10.9)	-28.7%	<ul> <li>Assumes</li> </ul>
Other Agencies	\$26.5	\$29.4	\$28.1	(\$2.9)	-9.9%	. 100 2
NASA	\$19.1	\$19.2	\$19.3	(\$0.1)	-0.5%	3% Growth
Agriculture	\$17.9	\$22.6	\$25.2	(\$4.7)	-20.8%	
Transportation	\$16.2	\$18.6	\$14.3	(\$2.4)	-12.9%	
Interior	\$11.6	\$13.2	\$13.2	(\$1.6)	-12.1%	<ul> <li>Projected</li> </ul>
Treasury	\$11.2	\$11.7	\$12.6	(\$0.5)	-4.3%	-
Labor	\$9.6	\$12.2	\$12.2	(\$2.6)	-21.3%	Balanced
SSA	\$9.3	\$9.3	\$9.3	\$0.0	0.0%	Budget in
Commerce	\$7.8	\$9.2	\$9.4	(\$1.4)	-15.2%	•
EPA	\$5.7	\$8.2	\$8.1	(\$2.5)	-30.5%	10 years
U.S. Army Corps	\$5.0	\$6.0	\$6.0	(\$1.0)	-16.7%	,
SBA	\$0.8	\$0.9	\$0.9	(\$0.1)	-11.1%	
GSA	\$0.5	\$0.3	\$0.6	\$0.2	66.7%	
Grand Total	\$1,085.8	\$1,087,6	\$1.080.2	(\$1.8)	-0.2%	Water Environmen

# The President's FY18 EPA Budget Proposal

- FY18 = \$5.65B *(FY17 = \$8.2B)*
- \$4M Increase for SRF Programs
- \$20M for WIFIA
- \$0 for GLRI, Chesapeake, Puget Sound, 319 & Environmental Justice programs.
- Cuts to enforcement programs
- Halved Categorical Grants



# **Other Proposed Cuts**

Program	FY18 Proposed	FY17 Enacted	Function	
USDA's Water/Wastewater Grant and Loan Program	\$0	\$498 million	loans and grants for drinking water and wastewater construction in rural communtiies	
HUD's Community Development Block Grant (CDBG) Program	\$0	\$3 billion	grants to communities for infrastructure projects, among other things	
U.S. Economic Development Administration	\$0	\$221 million	grants and loans to communities for infrastructure projects to promote economic growth, among other things	

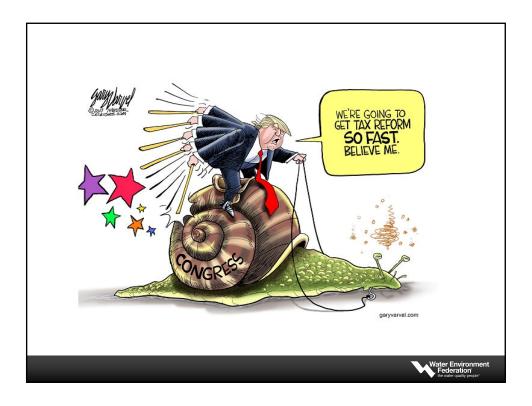


## FY18 Budget

Program	FY15 Enacted	FY16 Enacted	FY17 CR	House FY18	Senate FY18	Our Request
Clean Water SRF	\$1.45B	\$1.35B	\$1.35B	\$1.1B	?	\$2.8B
Drinking Water SRF	\$907M	\$863M	\$863M	\$863M	?	\$1.8B
WIFIA			\$28M	\$25M	?	\$45M
Total Combined	\$2.36B	\$2.213B	\$2.241B	\$1.988B		\$4.645B

- The EPA's recent Clean Water Needs Surveys estimated that the nation will need \$271 billion over the next 20 years, but the report states that the data underestimates stormwater infrastructure needs by roughly \$100 billion.
- The EPA's recent Drinking Water Needs Surveys estimated that the nation will need \$384 billion over the next 20 years.





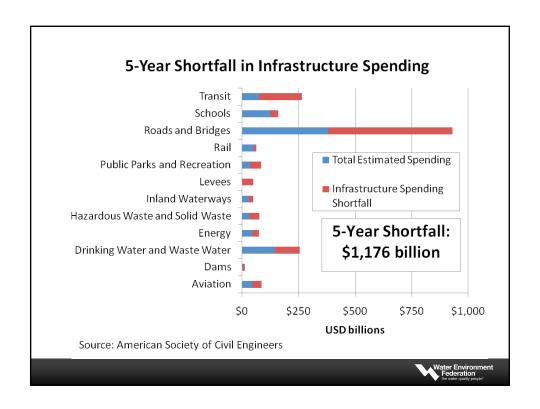
# Tax Reform

#### Latest Predictions: ?

House GOP has a draft tax reform proposal. Some of the highlights include:

- consolidating the current seven tax brackets into three (rates of 12 percent, 25 percent and 33 percent),
- · doubling the standard deduction,
- · eliminating the personal exemption,
- $\bullet$  eliminating all itemized deductions besides mortgage interest and charitable giving,
- · eliminating the gift and estate taxes,
- eliminating the alternative minimum tax and reducing capital gains tax rates to essentially one half the rates on ordinary income.





## Infrastructure Bills

#### Trump's Words:

We will build new roads, and highways, and bridges, and airports, and tunnels, and railways all across our wonderful nation.

We will get our people off of welfare and back to work - rebuilding our country with American hands and American labor.

We will follow two simple rules: Buy American and Hire American.

-- Inaugural Address, 2017

 Trump's Estimations: \$1 trillion (\$200 billion in federal funds; the rest in private capital)



## How to Pay For It?

Commerce Sec. Wilbur Ross and U.C. Irvine business professor Peter Navarro - Ross-Navarro Plan:

To stimulate \$1 trillion in expenditures over 10 years, the Trump administration will hand out \$137 billion worth of tax credits to private businesses. That federal tax credit would leverage a flood of private money, covering 82 percent of the equity needed for new projects.



## How to Pay For It - cont.

Repatriation of Overseas Corporate Profits:

- The Joint Committee on Taxation estimates that there are about \$2.6 trillion in overseas undistributed nontaxed earnings as of 2015.
- A one time tax of 8.75 percent on repatriated earnings would raise roughly \$140 billion - \$185 billion over ten years according to multiple estimates.



## **Public-Private Partnerships**

How does Congress Address these Challenges for P3?

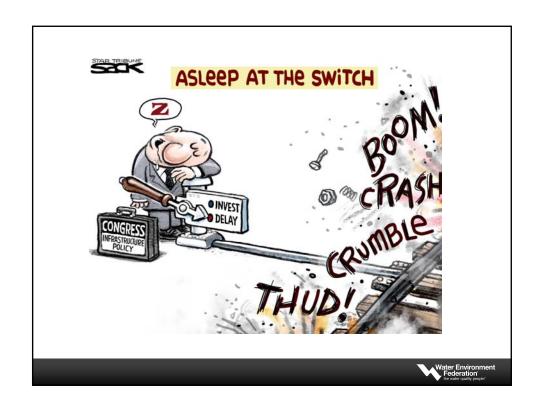
- 10% 15% Return on Investment
- New Construction w/ User Fees or another pay-for
- Not typically used for maintenance and plant modernization
- Regulatory and Legacy Burdens
- Project Size and Scope Rural vs. Urban
- Local Ownership



# Other Potential Funding Tools

- Trust Fund
  - Voluntary for consumer products w/ label for \$.03/unit
- Infrastructure Bank
  - \$10B Proposed by Democrats = \$100B/10 years
- Buy America Bonds
  - Obama Proposed \$71B/10 years @ 28% federal subsidy = budget neutral







### **ELEVATE WATER**

#### NATIONAL PRIORITY

## Hand-out for 2017 Fly-In!

www.waterweek.us

Consider these fact wastewater infrastr \$6.35; each job cre to 3.68 jobs in the r annually is spent or anticipated that exy metropolitan water, will contribute \$524

AMERICA'S QUALITY OF LIFE DEPENDS

Well-functioning water and wastewater systems, and the research efforts to support them, are critically important to America's quality of life. Past investments in dinking water, wastewater and stormwater inflastructure have off America with some of the best dinking water in the world, while providing our children with safe water or swimming and bathing, and our cities and towns to within the providing our children with safe water or swimming and bathing, and our cities and towns new businesses, residences, and recreational activities. However, investment in water, wastewater and stormwater infrastructure and research has failed to keep pace with maintenance demands and emerging hydrological threats, putting our quality of life on spins at risk.

#### FEDERAL INVESTMENT ENSURES SAFE AND CLEAN WATER

Since enactment of the Clean Water Act in 1972 and the Safe Drinking Water Act in 1974, Congress has supported a strong federal funding partnership with States and local

- Investments in the Drinking and Clean Water State Revolving Funds, which return over \$.93 to the
- Tax-exempt municipal bonds, which financed nearly \$38 billion in water and wastewater infrastructure in 2016; and.
- WIFIA, the Water Infrastructure Finance and Innovation Act, which has the potential to leverage ove \$60 for every \$1 invested in major water and waster water recipierts

Yet EPA estimates that America's water and wastewater infrastructure requires more than 5550 billion borth of investment over the next 20 years just to maintain current levels of service, and independent estimates place this figure over \$1 trillion. While local ratepayers will shoulder much of this burden, all levels of government must be part of the solution.

IT IS TIME TO RENEW THE LOCAL-STATE-FEDERAL SAFE AND CLEAN WATER FUNDING PARTNERSHIP

#### WE CALL ON CONGRESS TO ENSURI

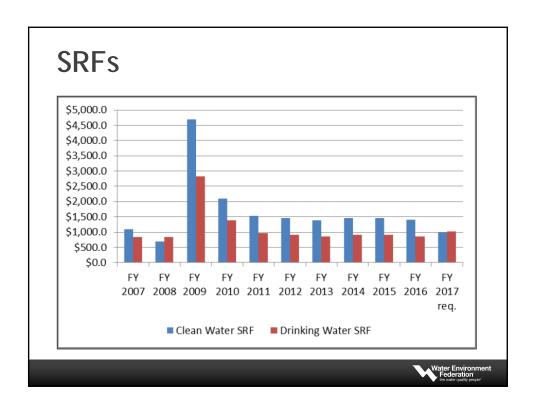
- \$2.8 BILLION for Clean Water State Revolving Fur for EY2018
- \$1.8 BILLION for Drinking Water State Revolving Fund for FY2018
- \$45 MILLION for Water Infrastructure Finance and Innovation Act for FY2018
- \$50 MILLION for the Bureau of Reclamation's water
- \$5 MILLION for National Priorities Research Funding
- FULL TAX-EXEMPT STATUS for interest earned on municipal bonds
- REMOVAL OF THE CAP on tax-exempt private activity bonds for water and wastewater infrastructure



# Overview of Message Points

- > \$2.8 billion for Clean Water State Revolving Fund for FY2018
- ➤ \$1.8 billion for Drinking Water State Revolving Fund for FY2018
- ▶ \$45 million for Water Infrastructure Finance and Innovation Act for FY2018
- > \$5 million for National Priorities Research Funding
- > Full tax-exempt status for interest earned on municipal bonds
- > \$50 million for the Bureau of Reclamation's Title XVI Program
- ➤ Removal of the cap on tax-exempt Private Activity Bonds for investments in water and wastewater infrastructure







## Major Water Bills

S. 1137 - Clean, Safe, Reliable Water Infrastructure Act of 2017

- · Sense of Congress for robust funding for SRFs
- Reauthorizes EPA's WaterSense program
- Reauthorizes Sect. 221 for CSO, SSO and SW grants at \$1.8B over 5 years

# H.R. 2510 - Water Quality Protection & Job Creation Act of 2017

- Reauthorizes the Clean Water SRF at \$20B over the next 5 years
- \$2.5B over 5 years for CSO, SSO and SW grants
- \$1.5B over 5 years for State water pollution control programs
- \$600M over 5 years for wet weather and stormwater projects and innovative management approaches



## Major Water Bills - cont.

Drinking Water System Improvement Act of 2017

- \$8 billion authorized for DWSRF over 5 yrs.
- \$750 million for the Public Water System Supervision grant program.
- Extents "Buy American" for 5 yrs.
- Enforcement reprieve for take over of failing systems.
- 6% set-aside of DWSRF for disadvantaged communities



## **Integrated Planning & Affordability**

#### Water Infrastructure Flexibility Act (S. 692)

The bill, co-sponsored by Sen. Deb Fischer (R-Neb.), focuses on integrated planning, affordability.

- Requires EPA to update 1997 guidance on financial capability
- Directs EPA to promote green infrastructure
- Establishes an Office of Municipal Ombudsman at FPA

#### Water Quality Improvement Act (H.R. 465)

The bill, introduced by rep. Bob Gibbs (R-Ohio), focuses on integrated planning, affordability.

- Requires EPA to update 1997 guidance on financial capability
- Codifies an integrated plan and permit approach into Law
- Stipulates that EPA will implement a 15-community pilot program

#### Small and Rural Community Clean Water Technical Assistance Act (S. 518)

Sen. Roger Wicker (R-Miss.) introduced this legislation to add support for small water systems.

 Provides rural sewer systems with \$75 million over five years for technical assistance



# TOWN THE PROTECTION

## WIFIA Important Program Features

\$20 Min

Minimum project size for large communities.



Maximum time that repayment may be deferred after substantial completion of the project.

\$5 MIL Minimum project size for small communities (population of 25,000 or less).



Interest rate will be equal to or greater than the U.S. Treasury rate of a similar maturity.



Maximum portion of eligible project costs that WIFIA can fund.



Projects must be creditworthy.



Maximum final maturity date from substantial completion.



NEPA, Davis-Bacon, American Iron and Steel, and all federal cross-cutter provisions apply.



## WIFIA Funding

April 10<sup>th</sup> Letters of Interest: 43 Letters requesting \$6 billion in loans (=\$12 billion in infrastructure investments.)

#### Projects:

- At least one in 9 out of 10 of the EPA regions
- Located in 20 different states (18 are in California)
- 9 water projects (including 3 desalination projects)
- 24 wastewater projects
- 10 combined water and wastewater projects (including 7 water recycling and aquifer recharge projects)

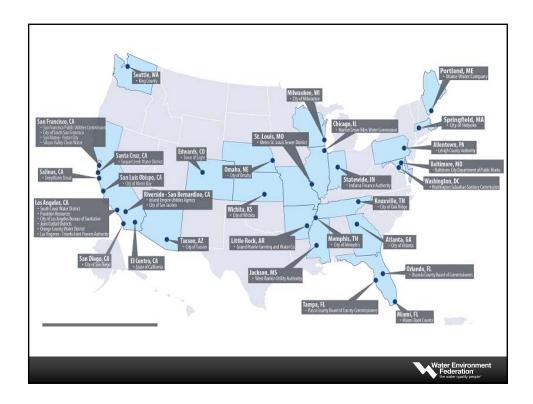


### WIFIA cont.

#### **Potential Borrowers:**

- 1 SRF program
- 3 partnerships & joint ventures
- 2 corporations & Trusts
- 37 public entities (including 2 small communities)
- About one-third of prospective borrowers indicated that they plan to or would like to cofinance with SRF funding
- Requests range from \$9 to \$635 M





## National Water Policy Fly-In: March 21-23

- Over 300 attendees from across the nation
  - Advocacy professionals
  - Utility experts
  - Many key House and Senate Members and Congressional staff
  - High-level EPA staff
- 300+ Congressional visits
- Most MAs sent a delegation to Fly-In; hope to have all next year

Save the Date: April 18 -19, 2018

www.WaterWeek.us/NWPF





# Water Advocates Program

- New Website:
  - http://wef.org/advocacy/water -advocates2/
- New Toolkit (posted on new website)
   Tips and Guidance on how to be an effective advocate
- Joining the Program is easy:

   wateradvocates@wef.org

   http://wef.org/advocacy/water

  -advocates2/
  - http://cqrcengage.com/wef/wa teradvocates





## Regulatory Highlights

- Waters of the United States (WOTUS)
   Rulemaking
- Dental Amalgam Rule
- CSO Public Notice in the Great Lakes Rule
- Long Term Stormwater Planning
- EPA National Nutrients Study



## Waters of the US Rulemaking

- On June 27, 2017, the EPA and the Department of the Army proposed a rule rescinding the Clean Water Rule and recodify the regulatory text that existed prior to 2015 defining "waters of the United States" or WOTUS;
- The EPA Administrator, Scott Pruitt, announced this first step in a two-step process to "redefine 'waters of the United States."



## Waters of the US Rulemaking

 Draft House FY18 EPA Appropriations bill passed yesterday includes language authorizing USEPA and USACE to avoid complying with the Administrative Procedures Act in order to expedite rescinding the Clean Water Rule.



# **Dental Amalgam Rule**

- EPA has promulgated pretreatment standards to reduce discharges of mercury from dental offices into publicly owned treatment works (POTWs)
- The Dental Office Category regulation is codified at 40 CFR 441
- The effective date of the rule is July 14, 2017.
- Dental offices that place or remove amalgam must operate and maintain an amalgam separator and must not discharge scrap amalgam or use certain kinds of line cleaners



## **Dental Amalgam Rule**

- Existing Dental Offices Existing dental offices must comply by July 14, 2020.
  - Existing amalgam separators may be operated for their lifetime or ten years, whichever comes first.
  - When a separator needs replacement, or the ten-year period has ended and the separator does not meet the standard of the final rule, a dental office must replace it with one that meets the requirements of the final rule.
- New Dental Offices -The compliance date for new dental offices ("new sources") is the effective date of the rule.
- Reporting Requirements Existing and new sources must submit a one-time compliance report. See the Federal Register notice for details. EPA has not prepared an example compliance report at this time.



# CSO Public Notice in the Great Lakes Rulemaking

- EPA, under Section 425 of the 2016
   Consolidated Appropriations Act, is
   required to work with Great Lakes states
   (Wisconsin, Illinois, Indiana, Michigan,
   Ohio, Pennsylvania and New York) to
   create public notice requirements for
   CSO discharges to the Great Lakes;
- EPA must implement by December 18, 2017



# CSO Public Notice in the Great Lakes Rulemaking

- EPA, working with a broad group of stakeholders, published a proposed rule on January 13, 2017, with public comments open until March 14, 2017;
- EPA received over 1,200 comments, and is currently reviewing them;
- EPA is expected to have a final rule signed in December 2017



# Community Solutions for Voluntary Long-Term Stormwater Planning

- EPA has prepared a draft guide that describes a process for developing a comprehensive long-term community stormwater plan that integrates stormwater management with:
  - communities' broader plans for economic development,
  - infrastructure investment and
  - environmental compliance



# Community Solutions for Voluntary Long-Term Stormwater Planning

- Through this voluntary approach, communities can:
  - prioritize actions related to stormwater management as part of:
  - capital improvement plans,
  - integrated plans,
  - master plans or
  - other planning efforts.



### Community Solutions for Voluntary Long-Term Stormwater Planning

- EPA continues to work with five pilot communities, providing technical assistance to develop long-term stormwater plans to serve as national models:
- Chester, PA
- Hattiesburg, MS
- Burlington, IA
- Rochester, NH
- Santa Fe, NM
- More information: <u>https://www.epa.gov/npdes/stormwater-planning</u>



# **EPA National Nutrient Study**

- EPA is conducting a national study regarding POTWs nutrient removal. The study will:
  - First, request data from all POTWs in the U.S. to develop a baseline of nutrient loadings from the POTW sector as a whole;
  - Second, focus on conventional secondary treatment facilities to develop information on optimization, operation, and management to identify low cost techniques for increasing nutrient removal.
  - The questionnaire is expected to be sent out to facilities in late 2017.



## **EPA National Nutrient Study**

- The main reason for this study is to establish a baseline on nutrient removal across
  the US and different secondary treatment trains to help municipalities and states
  explore optimization practices at secondary treatment facilities;
- The second main reason for this study is to update nutrient removal performance information at POTWs and to make sure regulatory programs states are upgrading or implementing reflect what is actually happening at waterbodies and watersheds across the country.
- If states have better data and more accurate estimates of nutrient loadings coming from POTWs, they can better adjust their limits and reporting requirements leading to better and more realistic permits.





### **WEFTEC Sessions of Interest**

#### WEF GAC Subcommittee Meetings

Sunday, 10:30 - Noon, Room N227b, North Building, Level 2

#### WEF GAC Meeting - Full Committee

Sunday, 3 - 4:30 PM, Room N227b, North Building, Level 2

#### **Opening General Session and Great Water Cities**

Monday, 8:30 AM - Noon, Room S100, South Building, Level 1

#### Session 200, Clean Water Policy Session

Monday, 1:30-5:00 PM, Room S504d, South Building, Level 5

#### Session 324, Finding the Money

Tuesday, 10:30 - Noon, Room 403a, South Building, Level 4

#### Session 325, Utility Leaders in Action

Tuesday, 10:30 - 12:00 PM, Room S406b, South Building, Level 4



### **Questions or Additional Info:**

#### WEF

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- Steve Dye Legislative Director sdye@wef.org
- Amy Kathman
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## **Available Resources:**

- Weekly Newsletter: This Week in Washington - to sign up, email akathman@wef.org
- Water Advocates website: http://cqrcengage.com/wef/home
- Stormwater Institute: http://wefstormwaterinstitute.org

