

The Changing Tide in Regulations, Permits and Environmental Standards- Where Will it Flow ?

Paul Hogan

NEWEA Spring Meeting
June 4, 2018

WHAT YOU ARE MISSING !!!





PLEASE NOTE:

**I AM NOT AN
EXPERT and
SURELY NOT AN
ATTORNEY !!!**

HOW ARE REGULATIONS, PERMITS & POLICIES MADE & CHANGED- WHO IS INVOLVED & SETS DIRECTION ??

- State & Federal Regulatory Agencies
- Legislatures- federal & states
- POTUS !!
- Courts
 - Supreme
 - Circuit & District, appeals
 - State
 - EPA EAB
 - ..of public opinion..



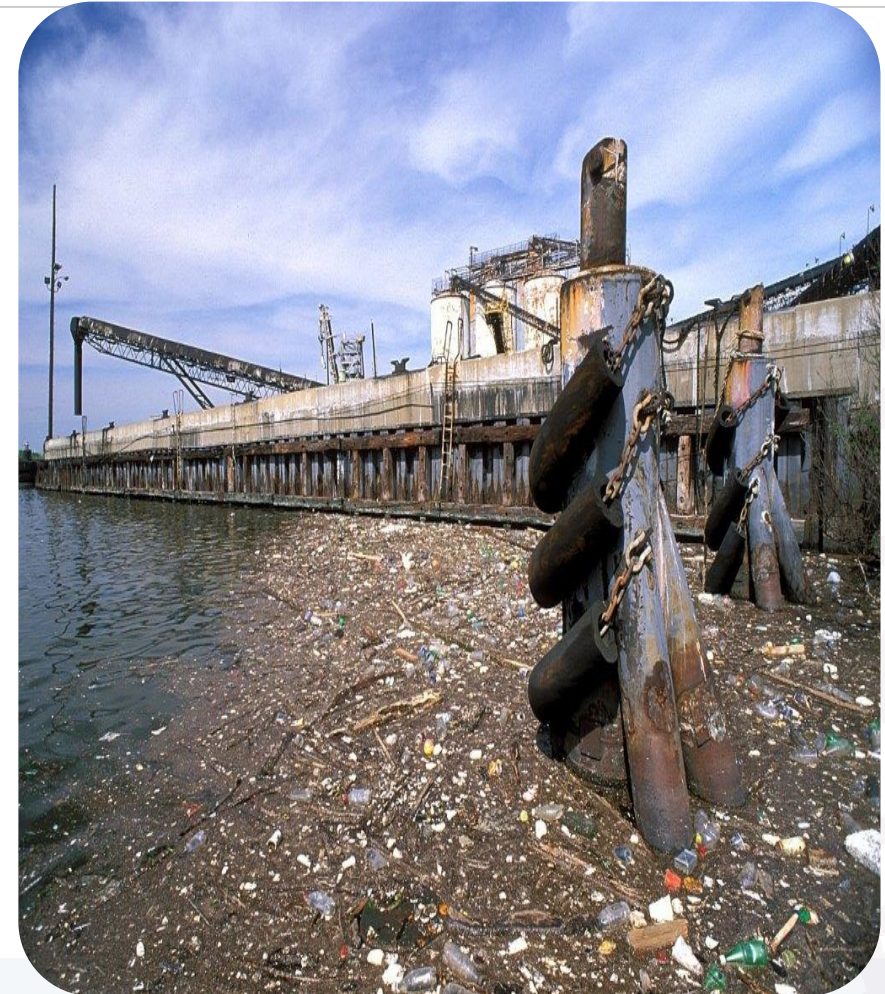
CLEAN WATER ACT 1972: "Cadillac"

- Federal Water Pollution Control Act, 33 U.S.C section 1251 et seq., as amended (1972)
- Aka Clean Water Act & Public Law 92-500 (Sections 318, 402, 405)
- Nixon vetoed October 17, 1972, Senate & House overrode veto- became law October 18, 1972
- \$ 24,000,000,000
- Major amendments in 1977 & 1987



CWA "Contents": What Did It Address ?

- Protected waters
- Pollution control strategies
- Financing- grants
- WQ Standards
- Enforcement
- Permits & Licenses
- Citizen Suits



GOOD BYE !!!



WATERS OF THE UNITED STATES (WOTUS)

- CWA Section 404 & 40 CFR 230(o)
- 2001 SWANCC & 2006 Rapanos cases
- May 27, 2015 EPA & ACOE WOTUS/CWR ISSUED
- N. Dakota District Court Injunction
- Oct 9, 2015 6th Circuit Appeals Court nationwide stay
- February 28, 2017 Executive Order 13778
- Jan 22, 2018 Supreme Court overruled 6th
- Feb 6, 2020 assigned “applicability date”



WOTUS "STUFF"

EO13778:

"Restoring the Rule of Law, Federalism and Economic Growth by Reviewing the Waters of the United States Rule"

- **> 1,000,000 comments** received on April 21, 2014 notice
- **2-step process** now to reconsider 2015 rule
- **Dave Ross @ EPA**



PFAS: IT'S REALLY HOT !!

- Per & polyfluoroalkyl substances
- PFOA & PFOS key targets
- Widely used since 1940's
- 2000-2002 voluntarily phased out in US
- EPA "Health Advisory" 2009/2016
- 2012 EPA "UCMR"
- State advisories & standards
- EPA Summit
- Regional sites



Aluminum Water Quality Criteria

- 1988 original
 - 87 ug/l chronic & 750 ug/l acute
- 2017 draft proposed
- Public comment 7/28-10/26 2017
- pH, DOC & hard incorporated
- MLR
- NH/MA WWTPs & WTPs impacted
- Hudson WWTP draft



MA NPDES DELEGATION VOYAGE

- Governor Baker bills
- 2016 tried & failed
- March 8, 2017 filed
- Obtain authority & \$4.7 M
- Joint Committee Review
- Hearing October 10, 2017
- “sent for study” (aka all done !!)
- NGO opposition



NH NPDES DELEGATION: still alive !!!

- Senate Bill 121 July 18, 2017
- Commission established
 - Report findings & fee structure
- SB 450 May 25, 2018
 - Advisory Commission
 - \$350,000 for consultant
 - Report March 1, 2020
- Will there only be 2 left ????



NH & MA MS4 STATUS: IT's A GO !!!

- July 1, 2018 effective date
- Replaces 2003 permits !!!
- NOIs due October 1, 2018
- Appeals on-going
- In D.C. Circuit Court
- Alternative dispute resolution underway
- Other states in various stages



MAINE'S NUTRIENT CONTROL FLOW STANDARD

- * Bill LD1298 (2018)
- * Effective AUG 8, 2018
- * Rulemaking needed
- * 7Q10 for all except for toxics & **NUTRIENTS**



Lake Champlain TP TMDL Implementation Plan

- **TP Sources:** municipal sw, unpaved roads, unstable streams, logging, agriculture, 3% from WWTP
- Phosphorus TMDL **“Accountability Framework”**
- 26 of 28 milestones met
- ag rules, logging rules, funding, manure application, new CSO rule, roads general permit
- **Act 64 in 2015**
- 20 year implementation schedule



Lake Champlain: Worth Saving !!!



CONNECTICUT WATER PLAN

- Public Act 14-163
- Water Planning Council develop plan
- DEEP, DPH, OPM, & PURA
- Stream flow standards, drought, climate change
- No priorities
- Basin by basin analysis



RHODE ISLAND: WWTP STORM RESILIENCY

- 2017 Evaluation 19 WWTPs
- 2017 RIDEM Guidance
- NEIWPCC TR-16
- RIPDES Permit Resiliency evaluation
- Warren RI design under new guidance
- BFEs, WHAFIS, FIRMS....



WHAT'S ON ROAD AHEAD ???- take note

- SW&SC NPDES TN
- EPA LIS TN Strategy
- Cape Town "Day Zero"
- Groundwater cases tied to CWA
- WIFIA & other \$\$\$ programs
- "One Water" Theory
- "New Federalism" ??!!- will it work





REGULATORY TIDE: In or Out ???

Thanks for listening and
participating !!

Questions, Ideas, Comments???!!!!
phogan@woodardcurran.com
774-364-2893

"GOOD BYE"

