



BY NATHAN E. VASSAR

ENFORCEMENT TRENDS AND DEVELOPMENTS: STRATEGIES FOR COMPLIANCE AND SUCCESS UNDER THE NEW ADMINISTRATION

As we are now several months into the new federal administration, many utilities across Texas and the United States are watching closely to see how wastewater enforcement and permitting will develop in the years ahead. Some trends may change, as new priorities and appointees come into place, however POTWs should be mindful of enforcement efforts that began several administrations ago that may not change significantly over the years to come. As such, we advise clients and WEAT members to be familiar with both longstanding practices and new developments at EPA/TCEQ and to be equipped with resources that can help position them for compliance and long-term goals to avoid enforcement, notwithstanding personnel changes in Washington, D.C. or Austin.

Many Texas utilities are familiar with the increase in federal wastewater enforcement over the past few years, as several Texas communities have negotiated or are in the midst of formal negotiations with the EPA. Some may not be aware that long before the 2016 election, EPA renewed its wastewater/stormwater enforcement initiatives through 2019. This repeated target (which primarily affects local government-run utilities) ensures that dischargers/permittees will remain under the microscope as an EPA priority for at least two more years, if not beyond. The renewed initiative is consistent with other new EPA campaigns. In recent years, federal regulators have touted so-called "Next Generation Compliance," as a means by which data is collected and made more publicly available, and where utilities may pay for certain enforcement/compliance checks performed by federal agencies or their consultants. Further, since the election, citizen groups have increased use of Clean Water Act citizen suits in Texas and beyond to initiate actions against permittees in order to supplement formal, agency-driven enforcement efforts. Next Generation Compliance is just one of many recent federal trends that utilities should be aware of, particularly as electronic reporting

becomes more widespread with the next phase of the federal rule. WEAT members who also have membership with the National Association of Clean Water Agencies may access a broader enforcement resource, the *'Wet Weather Consent Decree'* handbook, updated by Lloyd Gosselink Rochelle & Townsend in late 2016. The handbook is an invaluable resource to navigate federal policies and enforcement priorities in recent years.

Familiarity with resources and trends is helpful for wastewater/stormwater utilities, but developing a plan for long-term compliance (in light of recent enforcement cases) is critical for an effective enforcement avoidance strategy. Such planning may include a compliance audit to identify effluent excursions, SSO trends, and related water quality data as compared to federal and state expectations. Some utilities have benefitted from a holistic planning framework that considers environmental compliance issues alongside CIP planning and ratepayer burden. The development of an integrated approach can lead to more flexible scheduling and smart investments that prioritize problem areas to support long-term compliance.

Further, utilities may wish to develop or update CMOM programs to reflect new technology, recently revised federal/state policies, and adaptive management principles. As many are aware, TCEQ's SSOI program has proved helpful for utilities to implement plans so as to avoid state enforcement. These programs and regulatory policies are important tools that communities can employ to maintain a record of environmental stewardship and show proactive compliance efforts.

The years ahead promise a number of regulatory, legal, and engineering challenges, but a renewed commitment to wastewater/stormwater compliance can lead to successful outcomes for utilities and their ratepayers in a way that avoids costly and lengthy enforcement discussions.

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