

**Enforcement Expectations and Opportunities in 2018:**

*By Nathan E. Vassar*

Predicting the future in any field can prove difficult – and in recent times, federal enforcement has been all over the map. Nonetheless, the lessons of the first year of the Trump Administration can shed light – and possible hints – as to what we may expect for wastewater utilities and permit holders in 2018. These trends present opportunities for leaders in Texas to take advantage of the current climate, and plan for an enforcement landscape that will certainly change again.

Although much of last year involved transitions and new leadership (Anne Idsal now is the EPA Region 6 Administrator as of mid-December), it also saw a drop in new enforcement cases against wastewater utilities. Utilities, however, would be wise not to exhale, but rather to become familiar with new leadership and their priorities. One such priority, as announced by EPA Administrator Scott Pruitt, is that of a return to “Four Corners” enforcement. This framework expects to focus more upon the correction of Clean Water Act violations, without the pursuit of other agency initiatives on the side. Affordability will also remain a focus, as there has been a shift away from imposing stipulated penalties and fines, and more toward using such funds for infrastructure improvements. On the legislative side, there are several pieces of federal legislation that seek to codify the “Integrated Planning” framework in a manner that allows flexible compliance scheduling across water quality platforms.

It has been said that the best qualification of a prophet is to have a good memory. As such, utilities should note that while many current initiatives at the federal level provide some enforcement relief, the window to take advantage of this trend may not be open forever. In order to benefit from the current policy climate, utilities should consider whether there are permit issues

that merit attention of state/federal staff, and whether a comprehensive water quality approach can be outlined now that may yield advantages well into the future. Few Texas utilities have entertained the opportunities to present alternative compliance schedules/permit requirements to regulators (even if you are not within a renewal cycle). Now is a perfect time to do so. Furthermore, using state resources, such as the SSO Initiative, can help further a compliance narrative that shows ongoing attention to Clean Water Act mandates, as well as asset management practices that will support compliance in the future.

The new year will present many challenges and opportunities for utilities across our state. It remains as critical as ever to be engaged and familiar with the policy trends in Austin, Dallas, and Washington, D.C. While new enforcement cases may be trending downward, that line will almost certainly tick up in the not-so-distant future. Accordingly, taking affirmative steps to get the attention/blessing of regulators now may prove fruitful down the road.

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