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## Municipal Compliance with the Clean Water Act

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# MUNICIPAL COMPLIANCE WITH THE CLEAN WATER ACT

## THE ACT

In October of 1972, Congress overrode the veto of President Richard M. Nixon to approve the Federal Water Pollution Control Act Amendments of 1972.<sup>1</sup> Spurred by growing public concern for the health and safety of our environment, this legislation established a set of programs intended to be far-reaching in scope and designed to address virtually every type of water pollution control problem.

## TITLE III - ENFORCEMENT

Included in this legislation were provisions establishing methods of control of pollution emanating from Publicly Owned Treatment Works (POTW's). In short, Title III of the Act provided for standards and limitations to be established to control pollution from local sewage treatment plants. Section 301(b)(1)(B)<sup>2</sup> provided that secondary treatment of this wastewater was to be the threshold limit for such polluters. The deadline for compliance was July 1, 1977.<sup>3</sup> In other words, for a POTW to be able to lawfully discharge wastewater after July 1, 1977, it was required to obtain a permit and to provide secondary treatment of its inflow to a treatment plant. Section 301(b)(1)(B)<sup>4</sup> further required the Administrator of the Environmental Protection Agency (EPA) to accurately define the composition of effluent and standards which could be achieved through secondary treatment in accordance with Section 304(d)(1).<sup>5</sup> In addition to this definition, amendments made in 1981<sup>6</sup> added Section 304(d)(4)<sup>7</sup> which provided that biological treatments such as oxi-

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1. Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. §§ 1251-1376 (1982).

2. *Id.* § 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B) (1982).

3. *Id.* § 301(b)(1)(A), 33 U.S.C. § 1311(b)(1)(A) (1982) (prior to 1972 amendment).

4. *Id.* § 301(b)(1)(B), 33 U.S.C. § 1311 (b)(1)(B) (1982).

5. *Id.*

6. Municipal Wastewater Treatment Construction Grant Amendments of 1981, § 304(d), 33 U.S.C. §§ 1251-1376 (1982).

7. *Id.* § 304(d)(4), 33 U.S.C. § 1314(d)(4) (1982).

dation ponds, lagoons, ditches, and trickling filters would be deemed the equivalent of secondary treatment as long as the pollutant removal efficiencies of these methods did not adversely affect the water quality standards established under the Act.

Section 301 (b)(1)(C)<sup>8</sup> also allowed limitations to be established which would require measures more stringent than secondary treatment. In essence, and defined further in Section 510,<sup>9</sup> States could provide more stringent standards to be met.

Although Congress has modified the code several times in the interim, including a major revision in 1977 known as the "Clean Water Act" (CWA), the standards imposed on POTW's have remained largely unchanged. Municipal owners of sewage treatment facilities have been, and are, required to obtain a permit in order to legally discharge pollutants.<sup>10</sup> Such permits contain effluent limitations defined by the minimum federal standard of secondary treatment<sup>11</sup> or more stringent limitations based on state water quality standards<sup>12</sup> which may require additional treatment of sewage before release.

#### TITLE IV - NPDES SYSTEM

Title IV of the Act<sup>13</sup> creates the permit system necessary to implement enforcement of the effluent standards. Section 402<sup>14</sup> established the National Pollutant Discharge Elimination System (NPDES) as an EPA-administered nationwide program for permitting and regulating all types of polluting discharges, including those from municipal sewage treatment plants.<sup>15</sup> This section also allows individual states, upon gaining approval, to administer the NPDES Program for discharges within their jurisdictions.<sup>16</sup> Many states, including West

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8. Federal Water Pollution Control Act Amendments of 1972, § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C) (1982).

9. *Id.* § 510, 33 U.S.C. § 1370 (1982).

10. *Id.* § 301(a), 33 U.S.C. § 1311(a) & § 402(a)(1), 33 U.S.C. § 1342(a)(1) (1982).

11. *Id.* § 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B) (1982).

12. *Id.* § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C) (1982).

13. *Id.* § 401-05, 33 U.S.C. §§ 1341-45 (1982).

14. *Id.* § 402, 33 U.S.C. § 1342 (1982).

15. *Id.* § 301(a), 33 U.S.C. § 1311(a) & § 402(a)(1), 33 U.S.C. § 1342(a)(1) (1982).

16. *Id.* § 301(b)(1)(C), 33 U.S.C. § 1311(b)(1)(C) (1982).

Virginia, now have primacy over the program subject to EPA oversight<sup>17</sup> to administer and enforce both the Clean Water Act and various state water pollution control acts.

### TITLE III - PENALTY PROVISIONS

In order to assist federal enforcement efforts, violators of the Act are made subject to substantial penalties. In addition to authorizing the Administrator of the EPA to issue orders,<sup>18</sup> Section 309<sup>19</sup> authorizes him to seek temporary or permanent injunctive relief<sup>20</sup> and provides for both civil<sup>21</sup> and criminal<sup>22</sup> penalties for willful or negligent violations. In its original form, the Act provided for criminal penalties of up to \$25,000 per day of violation and/or not more than one year of imprisonment for violators. Civil penalties of up to \$10,000 per day of violation were also available.

Section 309(c) was amended by the Water Quality Act of 1987<sup>23</sup> to provide that knowing violations carry a maximum criminal penalty of up to \$50,000 per day of violation and three years imprisonment, or both. For a second offense, the penalties are doubled for both negligent and knowing violations. The 1987 amendments also increased the maximum civil penalty to \$25,000 per day of violation.

The inclusion in state acts of penalties for violations is not defined by the Act as a prerequisite to obtaining state primacy over the NPDES Program. Program approval by the EPA administrator, however, requires that state penalties be adequate to ensure compliance.<sup>24</sup> As a result, individual state penalties do not necessarily match those available on the federal level, but states are encouraged

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17. *Id.* § 309(a)(3), 33 U.S.C. § 1319(a)(3) & 402(i), 33 U.S.C. § 1342(i) (1982).

18. *Id.* § 309(a)(2)(A), 33 U.S.C. § 1319(a)(2)(A) (1982).

19. *Id.* § 309, 33 U.S.C. § 1319 (1982).

20. *Id.* § 309(b), 33 U.S.C. § 1319(b) (1982).

21. *Id.* § 309(d), 33 U.S.C. § 1319(d) (1982).

22. *Id.* § 309(c), 33 U.S.C. § 1319(c) (1982).

23. Water Quality Act of 1987, § 309(c), 33 U.S.C. § 1319(c) (Supp. 1987).

24. Federal Water Pollution Control Act Amendments of 1972, § 402(b)(7), 33 U.S.C. § 1342(b)(7)

(1982).

to institute comparable penalty procedures in order to readily gain EPA approval.<sup>25</sup>

West Virginia, for example, instituted increased penalties prior to gaining EPA approval by authorizing the Chief of the Division of Water Resources to request civil penalties<sup>26</sup> not to exceed \$10,000 per day of violation and criminal penalties<sup>27</sup> up to \$25,000 per day of violation and/or imprisonment of up to one year in addition to issuing orders and requesting injunctive relief.

The 1987 amendments increasing federal penalties do not require that states with approved NPDES programs to match the new penalty limits, but do allow the EPA administrator to define new minimal penalty authority that must be available to states in order for them to maintain primacy.<sup>28</sup> The impact on state programs as a result of these amendments is not yet clear as the EPA had not yet made available any new penalty requirements as of September 1987.

It is important to remember that the EPA maintains its enforcement authority even where state programs are approved.<sup>29</sup> If, after notification of an existing violation, the EPA determines that the state has not taken appropriate enforcement action, the Administrator is authorized to proceed with civil action in Federal District Court seeking penalties or injunctive relief.<sup>30</sup> In addition, Section 402(i)<sup>31</sup> clearly states that nothing in Section 402<sup>32</sup> dealing with approval of state programs is intended to preclude the enforcement actions made available to the EPA.<sup>33</sup>

The practical result of these provisions is that nearly all state enforcement decisions are subject to at least passive EPA review and

25. Discussion with Pravin Sangani, Section Chief of the Municipal Waste Section, West Virginia Department of Natural Resources (Aug. 15, 1987).

26. W. VA. CODE § 20-5A-17 (1985).

27. *Id.* § 20-5A-19 (1985).

28. Water Quality Act of 1987 § 313(b)(2), 33 U.S.C. § 1323(b)(2) (Supp. 1987).

29. Federal Water Pollution Control Act Amendments of 1972, § 309(a), 33 U.S.C. § 1319(a) & § 402(i), 33 U.S.C. § 1342(i) (1982).

30. *Id.* § 309(a), 33 U.S.C. § 1319(a) & § 402(b), 33 U.S.C. § 1342(b) (1982).

31. *Id.* § 402(i), 33 U.S.C. § 1342(i) (1982).

32. *Id.* § 402, 33 U.S.C. § 1342 (1982).

33. *Id.* § 309, 33 U.S.C. § 1319 (1982).

approval; and, if not satisfied with state action, the EPA is free to pursue enforcement action on its own.<sup>34</sup> This leaves state enforcement authorities very little leeway in setting policy or making individual decisions. Nearly every action taken must consider the possible EPA response and the potential for possible separate federal action. An adequate degree of cooperation seems to exist between EPA regional offices and individual state authorities, but the potential for EPA second-guessing always exists. Not only must state authorities consider the EPA response, but individual permittees such as the operators of sewage treatment facilities must consider the potential for EPA action when dealing with state enforcement officials.

## TITLE II - CONSTRUCTION GRANTS

Title II of the 1972 Act<sup>35</sup> created a construction grants program which has been subsequently funded every year. This program allows the operators of POTW's to obtain federal matching funds for construction of the facilities necessary to ensure compliance. The percentage of project funding available, eligible costs, and appropriation of these funds have varied over the years through policy changes made by EPA as well as legislative amendments.<sup>36</sup> In essence, the construction grants provisions have varied with each amendment to the Act. Initially, the grants program demonstrated the recognition by Congress that large-scale construction of sewage treatment works is an expensive proposition and sometimes places a heavy financial burden on municipalities seeking to achieve compliance. Through such assistance, they hoped to ease this burden and expedite compliance with secondary treatment standards.

The 1987 amendments<sup>37</sup> marked this construction program as yet another victim in the scheme of reduced federal assistance to state and local governments that has been prevalent since about 1980. These amendments will terminate the grants program and see it evolve

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34. *Id.* § 309(a), 33 U.S.C. § 1319(a) & § 402(i), 33 U.S.C. § 1342(i) (1982).

35. *Id.* § 201-09, 33 U.S.C. §§ 1281-99 (1982).

36. For a more detailed discussion, see J. KOVALIC, *THE CLEAN WATER ACT WITH AMENDMENTS*, 1-30 (Water Pollution Control Federation, 1982).

37. Water Quality Act of 1987, §§ 101-525, 33 U.S.C. §§ 1251-1376 (Supp. 1987).

into a state-administered revolving fund loan program by 1991.<sup>38</sup> Title I<sup>39</sup> amendments authorize funding at previous levels only through fiscal year 1990.<sup>40</sup> Of this, a certain portion of funds may be used to establish state revolving fund accounts. The only important appropriations authorized for 1991 and beyond are capitalization grants for revolving loan funds. In short, the grants program is being phased out over a three year period (1987-90) and after that, municipal dischargers seeking assistance must look to low-interest loans from the established state revolving funds. Apparently no more direct grants will be available. This change is of great importance to dischargers who must still construct the facilities necessary to achieve compliance. If direct grant funds are the only realistic financial means for achieving compliance, these municipalities must act quickly if they want to receive such assistance or face the alternative of securing loans which, of course, must be somehow repaid.

#### STATE STATUTES - WEST VIRGINIA AS AN EXAMPLE

Of the 37<sup>41</sup> states which self-administer NPDES programs, most probably initiated some type of enabling legislation in response to the 1972 Federal Act. In order to allow states to gain EPA approval and to administer state NPDES programs, at least minor changes to state codes were probably necessary. The West Virginia Code, for example, in addition to other provisions of the State Water Pollution Control Act,<sup>42</sup> authorizes the Chief of the Department of Natural Resources Division of Water Resources to "perform any and all acts necessary to carry out the purposes and requirements of this article and of the Federal Water Pollution Control Act, as amended, relating to this state's participation in the National Pollutant Discharge Elimination System established under that act."<sup>43</sup>

38. *Id.* §§ 211 & 212, 33 U.S.C. §§ 1291-92 (Supp. 1987).

39. *Id.* § 101(h), 33 U.S.C. § 1251(h) (Supp. 1987).

40. *Id.* §§ 101(h), 211 & 212, 33 U.S.C. §§ 1251(h), 1291-92 (Supp. 1987).

41. ENFORCEMENT DIVISION, OFFICE OF WATER ENFORCEMENT & PERMITS, U.S. ENVIRONMENTAL PROTECTION AGENCY NATIONAL MUNICIPAL POLICY (NMP) HIGHLIGHTS (Sept. 1986) [hereinafter NMP HIGHLIGHTS].

42. W. VA. CODE § 20-5A-1 to -24 (1985).

This paragraph makes a broad-sweeping statement authorizing the chief to take any action necessary to enforce the Federal Act, and it would seem to enforce EPA policy promulgated under the Act as well. In addition to this authority, the West Virginia Code<sup>44</sup> makes it unlawful for any persons to allow sewage or other waste or the effluent therefrom to flow into the waters of the state except in accordance with a valid permit issued by the Department. Although the term "allow" may have special significance with respect to certain Public Service Districts, this section basically prohibits point-source discharges without an NPDES permit by state as well as federal law. On its face, this state law also appears to carry strict liability.

West Virginia has also established civil penalties in the same amounts as provided in the original Federal Act. West Virginia Code 20-5A-17 authorizes the chief to request civil penalties up to \$10,000 per day of violation for the violation of any provision of the State Water Pollution Control Act including permit violations and violations of administrative orders issued by the chief. Section 20-5A-19 establishes criminal penalties of up to \$25,000 per day of violation and/or up to one year of imprisonment.

It is not clear what impact the increase of federal penalties, as mandated by the 1987 amendments to the CWA, will have on state penalties. The EPA administrator may require that increased penalties be available as a prerequisite to retaining continued EPA approval of state NPDES programs. The 1987 federal amendments authorized the EPA administrator to determine acceptable minimum penalties that must be available,<sup>45</sup> but as of July 31, 1987, such a determination had not been made available. In any event, West Virginia state law, through Chapter 20, Article 5A of the Code, is sufficient to enforce both the federal effluent limitations and state water quality standards on its own. It seems likely that the currently available state penalties will be considered adequate.

In fact, state and federal law in this area compliment one another very well. In West Virginia, at least, state programs, penalties, per-

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44. *Id.* § 20-5A-5(b)(1) (1985).

45. Water Quality Act of 1987, § 313, 33 U.S.C. § 1323 (Supp. 1987).  
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mit systems, and prohibitions are in place which should allow the state to carry out the purposes and intent of the federal Clean Water Act without the additional authority of federal law.<sup>46</sup>

### HISTORY AND DEVELOPMENT OF COMPLIANCE

The history of compliance with secondary treatment requirements has not been impressive. Largely the result of the heavy financial investment required by POTW's, compliance with the July 1, 1977 deadline was poor.<sup>47</sup> In addition, President Nixon impounded \$9.0 billion of the \$18.0 billion originally appropriated soon after passage of the Act.<sup>48</sup> Although the Supreme Court ordered these funds released in 1975,<sup>49</sup> the impact of this impoundment severely hampered compliance. Fluctuating federal appropriations, as well as a certain degree of resistance by dischargers, no doubt adversely impacted compliance figures.

The 1972 Act made no statement as to how the availability of federal assistance might impact on the compliance deadline of July 1, 1977. In the 1977 amendments, section 301 was amended by creating the possibility for case by case extensions of the deadline to July 1, 1983 when construction required for compliance could not be achieved by that date or in situations wherein grant funds had not been made available.<sup>50</sup> This seemed an admirable recognition by Congress that federal problems had hampered local compliance efforts and that the intent really had been to make federal funds available to all POTW's needing construction to achieve compliance with the new standards. This effort was not always well received, however. In West Virginia, for example, very few facilities, if any, ever applied for the 301(i) extension and none ever received it.<sup>51</sup> Thus, facilities not in compliance with the July 1, 1977 deadline

46. W. VA. CODE § 20-5A-1 to -24 (1985).

47. "[O]nly 30% of the municipalities were able to meet the 1977 deadline for secondary treatment." J. KOVALIC, *supra* note 36, at 17.

48. *Id.* at 14.

49. *Train v. New York*, 420 U.S. 35 (1975).

50. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

51. W. VA. DEP'T OF NATURAL RESOURCES, NAT'L POLLUTANT DISCHARGE ELIMINATION SYSTEM,

were in violation of the Act and would remain so until compliance could be achieved.

By 1981, compliance was still not impressive. Over 10,000 municipal dischargers, including many large urban areas, were still not able to comply with the July 1, 1977 secondary treatment requirements.<sup>52</sup> Congress again amended Section 301 in the 1981 amendments to allow dischargers to request an extension until July 1, 1988.<sup>53</sup> At least in West Virginia, little action was taken to obtain the extension. In fact, no West Virginia facilities obtained this extension.<sup>54</sup> This lack of interest in obtaining the available extensions may be partially explained by confusion regarding the construction grants program. With all the deadline switching and available extensions, the construction grants program continued with seemingly little regard for non-compliance. Facilities could still reasonably expect to obtain a grant and the EPA had taken little enforcement action, so the deadline for compliance was probably confused in the minds of local officials in charge of sewage treatment facilities. In West Virginia, facilities not in compliance could still expect to receive a grant even though they had been violating the Act since 1977.<sup>55</sup> The EPA had taken little action to force compliance,<sup>56</sup> and it was reasonable to expect that it would not. Most of these municipalities were in decreasingly stable financial condition and could not easily construct the necessary facilities without federal assistance, a fact that Congress seemed to agree was a nationwide concern when it created the 301(i)<sup>57</sup> extensions. Although it must be admitted that many of these facilities either resisted compliance or ignored the available grant funds, the fact remains that the atmosphere existing in 1981 was not conducive to ensuring compliance. Municipalities were not forced to, and simply did not, comply.<sup>58</sup>

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52. J. KOVALIC, *supra* note 36, at 24.

53. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

54. W. VA. DNR PERMIT FILES, *supra* note 51.

55. As evidenced by the continued operation of the W. Va. DNR Construction Grants Program.

56. West Virginia did not gain primacy over the NPDES program until May 10, 1982.

57. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. 1311(i) (1982).

58. It should be noted that the progress in compliance was being made both nationwide and Disseminated by The Research Repository @ WVU, 1988

The compliance situation has improved greatly since 1982. Although many facilities are still in violation and technically have been for a decade, progress is being made. Many facilities nationwide will not meet the deadline of July 1, 1988 whether operating under 301(i)<sup>59</sup> extension or not,<sup>60</sup> and the deadline established by 301(i)<sup>61</sup> appears to be firm. Contrary to its previous pattern, Congress has recently amended the Act<sup>62</sup> without extending the deadline. In addition, construction grants funding is being phased out and state revolving funds established.<sup>63</sup> Failing to extend 301(i)<sup>64</sup> beyond July 1, 1988, after having had ample opportunity to do so, seems to be a statement by Congress that this is the final deadline. Dischargers not complying by that date will be in violation of the acts and subject to the penalty provisions of the Federal Code as well as the state penalties available in the 37 NPDES States.

#### NATIONAL MUNICIPAL POLICY

A two-page document signed by William D. Ruckleshaus in January of 1984 has shaped the recent and future course of enforcement of the Act with respect to municipal compliance. This statement of policy and implementation strategy is known as the Environmental Protection Agency National Municipal Policy (NMP).

The National Municipal Policy recognizes that amendments to the law and available 301(i)<sup>65</sup> extensions has resulted in multiple compliance deadlines for POTW's. While the CWA requires *all* POTW's to meet compliance deadlines for achieving water quality standards

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in West Virginia, at least some of which was apparently voluntary. This is evidenced by the fact that 30% compliance was achieved nationwide by 1977 (*see supra* note 47) and that by 1987, West Virginia had only four "major" non-complying municipalities (according to W. VA. DNR PERMIT FILES).

59. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

60. U.S. ENVIRONMENTAL PROTECTION AGENCY, NATIONAL MUNICIPAL POLICY STATEMENT (Jan. 1984) [hereinafter NMP STATEMENT].

61. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311 (i) (1982).

62. Water Quality Act of 1987, 33 U.S.C. §§ 1251-1376 (Supp. 1987).

63. *Id.* §§ 101(h), 211, & 212, 33 U.S.C. §§ 1251(h), 1291-92 (Supp. 1987).

64. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

regardless of the receipt of federal funds, the policy statement focuses on compliance by three categories of facilities. First, the policy includes those facilities that previously received federal funding assistance but have not achieved compliance with their effluent limitations. The inclusion of this group seems to indicate that the EPA is interested in assuring maximum benefit derived from the federal investment, both previous and future, in local wastewater treatment projects. This "getting the most for the federal dollar" purpose would also further the goal of achieving compliance through efficient operation of these previously constructed facilities rather than unloading more federal construction grant funds on them in order to ensure compliance.

A second group included non-complying "major" facilities,<sup>66</sup> and a third group consists of minor facilities which are significant contributors of pollutants or impair water quality in specific cases. The inclusion of these three groups as a focus will not adequately address all problems related to non-compliance with the Act, but will address a majority of the municipal polluters nationwide. This limited focus allows the EPA to establish a fairly manageable policy and to avoid some of the problems associated with facilities which fall outside the identified categories. Since it does not address all facilities, one might expect the development of a revised or renewed policy statement as compliance is achieved within the focus group. Such a policy would presumably establish guidelines for enforcement of the Act with regard to municipal polluters not named in the original focus.<sup>67</sup> Currently, while the Act covers *every* facility, EPA policy is directed only toward specific types of facilities.

The EPA's goal as stated in the NMP is to obtain compliance by POTW's as soon as possible and no later than July 1, 1988. Interestingly enough, neither this goal nor the definition of the focus groups has any direct relation to the extensions made possible through

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66. Major facilities are defined as those with greater than one million gallons per day flows.

67. Those facilities falling outside the three focus categories.

Section 301(i).<sup>68</sup> The extensions granted through 301(i)<sup>69</sup> seem to have been largely ignored, and the EPA's national policy does not differentiate between facilities that have received an extension until July 1, 1988 and those that have been in violation since July 1, 1977. The policy seems to effectively grant everyone a deadline extension until 1988. While this may be a realistic approach, it does conflict with the provisions of the Act.

In addition to the stated goal of compliance by July 1, 1988, the NMP also recognizes that some facilities may not meet the deadline:

Where there are extraordinary circumstances that preclude compliance of such facilities by July 1, 1988, EPA will work with States and the affected municipal authorities to ensure that these POTW's are on enforceable schedules for achieving compliance as soon as possible thereafter, and are doing all they can in the meantime to abate pollution to the Nation's waters.<sup>70</sup>

The recognition that circumstances may preclude compliance prior to the deadline is most applicable to facilities that will not have the necessary financial capability to construct an expensive wastewater treatment facility with or without federal assistance. While an admirable recognition of very real concern, this statement does little toward defining "extraordinary circumstances" or "enforceable schedules." On its face, the policy statement seems to pose these questions as judgment calls to be made in individual cases by EPA and state enforcement officials. In practical terms, the phrase "extraordinary circumstances" seems to mean almost any good faith reason explaining why one has not complied, and "enforceable schedules" seems to mean any such reason established by judicial order.

The implementation strategy of the NMP directs NPDES states to develop individual strategies for operation under the policy with EPA headquarters oversight to ensure nationwide consistency. The main thrust of the EPA's implementation strategy is to require mu-

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68. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

69. *Id.*

municipalities to develop their own correction plans as the basis for negotiation with permitting authorities for final compliance schedules and interim abatement methods. While generally intending that compliance be achieved prior to July 1, 1988, the implementation strategy allows the permitting authority<sup>71</sup> to work with municipalities to establish fixed date schedules for compliance beyond July 1, 1988 where extraordinary circumstances exist. Again, the goal is *enforceable* schedules, but "enforceable" is not directly defined. Once the compliance schedules are in place, the NMP strategy calls for continued monitoring of schedule compliance and follow-up enforcement action as required.

As a whole, the NMP probably represents the realists' approach to municipal compliance. Target groups are identified which represent the largest sources of pollution. The 1977 deadline and 301(i)<sup>72</sup> extensions are substantially ignored, and all facilities seem to be granted equal status with respect to the deadline. Possible inability to comply by the deadline is recognized, and procedures are advanced to handle the problem even though a better definition of terms would be desirable. Although the policy does not advocate a full-scale letter of the law approach to enforcement, it does seek to gain substantial compliance by the congressional deadline and to answer the problem of widespread non-compliance.

The EPA *Draft* of Regional and State Guidance on the NMP<sup>73</sup> addresses at least one of the problems of the original statement. For facilities that cannot comply by July 1, 1988, "enforceable schedule" clearly means that judicial orders must be issued. A court-ordered schedule for compliance seems to be the EPA's answer. While this resort to the judicial system may be an unusual step for the executive branch to take in response to a legislative mandate, it does demonstrate the effectiveness of our governmental make-up. To insure that water pollution is corrected, all three branches of government

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71. NPDES States or EPA Regions.

72. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i) (1982).

73. U.S. ENVIRONMENTAL PROTECTION AGENCY, DRAFT OF REGIONAL AND STATE GUIDANCE ON THE NATIONAL MUNICIPAL POLICY (Dec. 1983).

must now be involved. At any rate, court-ordered compliance schedules are the requirement for post - July 1, 1988 compliance.<sup>74</sup>

The CWA makes no direct correlation between receipt of federal funding and compliance. In other words, compliance by municipalities cannot be conditioned on receiving federal assistance. However, the policy guidance states that "[t]he goal here is to simply move these projects through the *grants* and construction phases as quickly as possible. . . ."<sup>75</sup> Another section of the Guidance bears the heading "compliance schedules should be reasonable"<sup>76</sup> and goes on to state that compliance schedules obtained through either administrative or judicial orders should provide municipalities with sufficient time to design and construct needed treatment facilities even where compliance cannot be achieved beyond the July 1, 1988 deadline.

The EPA's National Municipal Policy can be viewed in either of two fashions. On one hand, the Policy seems to represent an attitude that the Clean Water Act,<sup>77</sup> which appears on its face to be a strict liability statute, should be treated as little more than a guideline, at least as it relates to POTW's. This view is reinforced by EPA policy<sup>78</sup> which seems to ignore some deadlines and extension requirements such as those of July 1, 1977 and July 1, 1983 and the applicability of Section 301(i) extensions.<sup>79</sup> The EPA policy also appears to establish fixed procedures for compliance at dates beyond the final deadline, and it appears generally to represent an attitude of conciliation, negotiation, and cooperation with violators instead of stressing strict enforcement of the Act and its municipal effluent requirements.

On the other hand, the policy can be viewed as a recognition of reality and as a reasonable program for ensuring that eventually the underlying goal of the Act, which is the restoration and protection

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74. *Id.* at 4-5.

75. *Id.* at 3 (emphasis added).

76. *Id.* at 4.

77. Clean Water Act of 1977, 33 U.S.C. §§ 1251-1376 (1982).

78. NMP STATEMENT, *supra* note 60.

79. Federal Water Pollution Control Act Amendments of 1972, § 301(i), 33 U.S.C. § 1311(i)

of our nation's waters, will be achieved. In fairness, this may be the best way to view the policy. In addition to dealing with enforcement of what appears to be a strict liability statute, the EPA must also deal with several other factors. Numerous amendments to the 1972 Act have no doubt created confusion, especially in smaller communities, as to when compliance is required. Deadlines have been delayed in six-year jumps, extensions have been made available which have resulted in varying deadlines for differing municipalities, and the definitions of required treatment have been revised. President Nixon's 1972 impoundment of congressional appropriations also compounded the confusion and frustration. Construction grants provisions have been altered virtually every time the Act has been amended. Percentages of matching funds, eligible costs, and congressional appropriations have also been inconsistent. In addition, the original 301(i)<sup>80</sup> extensions were keyed into the availability of federal assistance, which has led to a continuing belief on the part of some cities that compliance was not required until they received a grant. Many cities faced with compliance responsibility could fairly believe that Congress would again modify the deadline to extend beyond 1988.

Financing has also been a problem. In 1972, wastewater treatment projects were expensive. The inflation of the 1970's and the recessionary period of the early 1980's, still lingering today in some parts of the country, have helped to drive up the costs of construction.<sup>81</sup> Today, non-complying POTW's, especially small or rural municipalities, are faced with a monumental funding problem in many cases before design or construction of necessary treatment facilities can begin.<sup>82</sup> Federal grant assistance has been slow in coming to many of these facilities. Although many reasons for this delay exist and no fault should be assigned except in specific cases, the reality

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80. *Id.*

81. W. Va. DNR Construction Grants' files indicate that current construction costs for many such projects are multi-million dollar investments.

82. 33 U.S.C. § 1283(a) requires the submissions of plans specifications, and estimates as part of the grant application process. Without federal assistance for such design costs, which can be expensive, municipalities must somehow finance these costs on their own. These costs are partially reimbursed as a part of the combined grant for design/construction when a grant is successfully received.



is that many facilities simply cannot achieve compliance without federal financial assistance.

In many cases, federal grant assistance will not be available until after the July 1, 1988 deadline.<sup>83</sup> If this seems odd, it should. Why should federal grant assistance and loan programs be available to assist municipalities with compliance *beyond* the deadline if compliance cannot be conditioned on the receipt of these funds and municipalities are responsible for complying with a strict liability deadline? By extending appropriations beyond the deadline, Congress seems to have recognized the many problems that have arisen in implementing the requirements for compliance with the Act and seems to have said, "Go ahead and comply by the deadline if you can." Nevertheless, the Act on its face is clearly a strict liability statute which requires municipalities to comply by the deadline or face stiff penalties. Confronted with these and other considerations, the EPA developed its National Municipal Policy. This Policy could not help but reflect some of the inconsistencies that have cropped up since 1972, but overall it seems to be sensitive to the many problems associated with compliance and should serve to encourage compliance as soon as possible, consistent with the underlying goal of cleaning up as much of the nation's waters as is financially feasible.

In short, the EPA's National Municipal Policy seems to be a reasonable effort to ensure compliance by the focus group representing a majority of municipal polluters through state and regional EPA strategies which will seek to enforce compliance before July 1, 1988 if possible. Where compliance by the deadline is not possible, enforcement officials will seek the assistance of the appropriate courts in obtaining judicial orders which contain fixed-date schedules for post July 1, 1988 compliance, based upon reasonable periods for design, financing, and construction.

#### STATE STRATEGY

The National Municipal Policy directs the NPDES states' development of individual strategies for implementing enforcement of

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83. 33 U.S.C. § 1311(i) (1982) as amended in 1981, establishes a compliance deadline of July 1, 1988, yet the Water Quality Act of 1987, § 211, 33 U.S.C. § 1291 (Supp. 1987), authorizes grant fund appropriations through 1990.

<https://researchrepository.wvu.edu/wvlr/vol90/iss2/15>

the Act within the guidelines established by the policy. These strategies are basically long-range planning documents which describe plans through which to bring non-complying facilities into compliance by the target dates. Of necessity, these documents mirror the NMP. They do, however, examine in greater detail specific facilities and compliance problems and, at least in some cases, establish additional categories or sub-categories of violators.

West Virginia's strategy for implementing the National Municipal Policy identifies the status of existing facilities in the state and enunciates a procedure for enforcement which suits its particular enforcement needs. While it closely resembles the national policy and guidance, West Virginia's strategy does exemplify that state problems vary somewhat from those identified in the NMP.

One of the three categories identified as a focus group by the NMP consists of major facilities, those with flows in excess of 1,000,000 gallons per day. In West Virginia, this category is not a major enforcement concern. Of the state's 34 existing major municipalities, 31 had secondary treatment at the time the strategy was finalized. A fourth non-complying "major" municipality has since been added to this category. However, with only four<sup>84</sup> "major" facilities without secondary treatment, West Virginia enforcement concerns lie more with "minor facilities" and with those facilities which possess secondary treatment but are not in compliance with effluent limitations due to minor deficiencies or other problems such as maintenance and operation.

The West Virginia strategy identifies seven categories and action plans for ensuring compliance by the various categories listed. These range from unsewered areas with no treatment whose sewer needs are low priority and pollution is minimal to municipalities which have the secondary treatment required to meet federal effluent standards<sup>85</sup> but must have additional secondary or tertiary treatment

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84. According to W. VA. DNR PERMIT FILES, *supra* note 51, the remaining four facilities include Hinton, Logan, Moundsville, and Martinsburg.

85. Federal Water Pollution Control Act Amendments of 1972, § 301(b)(1)(B), 33 U.S.C. § 1311(b)(1)(B) (1982).

to protect water quality standards for discharges into more sensitive streams.<sup>86</sup>

In addition to the water pollution concerns of the Act, unsewered or poorly sewerred areas in West Virginia also pose a health concern. The introduction of adequate water and sewage systems into rural and remote areas of the state presents a special concern for enforcement officials sensitive to the geography and history of the state. While the need for adequate facilities in these areas can hardly be argued, small communities with very limited resources are often involved, and the necessary facilities are generally more expensive to construct than those in more densely populated urban areas.

These concerns represent an enforcement problem peculiar to one state. It is likely that other states will also be faced with unique concerns. All state strategies must be based on a consistent national policy, but each state must develop its own individual strategy with a slightly different perspective based upon its particular situations. In most other respects, one can expect the individual strategies to closely mirror the NMP. While the problems may vary, the enforcement procedures are likely to be very similar.

West Virginia's strategy closely follows the NMP example for enforcement procedures. The use of municipality-proposed enforcement schedules known as Municipal Compliance Plans and Composite Correction Plans, administrative orders, negotiation and cooperation in establishing reasonable compliance schedules, and the use of judicially ordered schedules follows much the same pattern set forth in the NMP and accompanying EPA guidance.

The underlying theme of state strategy is the same as that of the national policy. Compliance will be achieved through administrative enforcement action prior to the July 1, 1988 deadline where possible, and where not achievable prior to the deadline, compliance will be accomplished by resorting to the courts to obtain judicially ordered, fixed-date compliance schedules with reasonable periods for design, financing, and construction.

## LOOKING TOWARDS THE 1988 DEADLINE

By next July, all facilities that have not provided adequate treatment will be in violation of the Act and subject to its penalty provisions.<sup>87</sup> The nationwide effort to implement the National Municipal Policy is heavily underway.<sup>88</sup> In practical terms, the result of this effort will be that most, if not all, POTW's identified by the policy will be involved in some type of civil action. Whether these cases are settled through negotiated agreement to the terms of a consent order or result in formal litigation, there will undoubtedly be a great deal of participation in the process by attorneys representing both the permitting or enforcement authorities and the municipal dischargers themselves.

The NMP makes clear that negotiation of compliance schedules and settlement by agreement to court ordered schedules is the route preferred by permitting authorities. Although the EPA and individual states are likely to seek civil penalties with varying degrees of enthusiasm, one thing seems likely. If municipalities choose not to participate in negotiations and settlement, permitting authorities are far more likely to vigorously seek penalties. Given the strict liability nature of the statute, non-cooperation would be a risky step for a municipality. For example, if a permitted POTW has less than adequate treatment and has not been able since 1977 to meet one effluent parameter, such as biochemical oxygen demand, the possible available penalty would be at least \$10,000 per day for over 10 years of violations. Although it is unlikely that this effluent parameter would be violated daily, it is possible that at least one parameter would be violated daily. Under this scenario, even a small municipality could face penalties of over \$36,500,000.<sup>89</sup> While it is unlikely that such a large penalty would actually be assessed, the magnitude of penalties authorized by the Act is substantial and should be considered.<sup>90</sup>

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87. *Id.* § 301(i), 33 U.S.C. § 1311(i) (1982).

88. NMP HIGHLIGHTS (June 1987), *supra* note 41.

89. 33 U.S.C. § 1319(d) (1982) (3650 days of violation at the maximum civil penalty of \$10,000 per day). *See also* W. VA. CODE § 20-5A-17 (1985).

90. 33 U.S.C. § 1319 (1982).

Even in cases that have been settled, the EPA has demonstrated a history of seeking up-front civil penalties in accordance with its penalty policy.<sup>91</sup> Many of these have been large settlements. States seem to focus on obtaining consent orders, often with stipulated penalties, while not emphasizing up-front penalties. From the EPA's perspective, penalties serve as an important deterrent against non-compliance.<sup>92</sup> From a state perspective, the substantial amount of these penalties can itself prove to be a deterrent to compliance. Communities with limited resources are fortunate if a financing package can be arranged for construction of a wastewater treatment project, and states fear that the burden of substantial fines and penalties will drain the already very limited resources that a municipality has allocated to the construction of the facilities necessary for compliance. As a result, it is the threat of these penalties rather than their actual imposition that may serve as the best motivation towards compliance.

Even in NPDES states, EPA oversight lurks in the background of this question. It is not clear whether the EPA will approve of widespread settlements that contain either no penalties or limited penalties. The possibility of EPA intervention is less likely, though, if a municipality is operating in good faith under a state-achieved court order for compliance. This possible intervention is yet another factor that should encourage dischargers to cooperate with state authorities in obtaining judicially ordered schedules as soon as possible.

#### EPA MUNICIPAL PENALTY POLICY

The EPA's Clean Water Act Penalty Policy for Civil Settlement Negotiations, effective February 11, 1986, outlines that agency's general position in regard to penalties available under the Act. Perhaps the most significant statement of policy is that "[T]he agency will *vigorously* pursue penalty assessments in judicial actions to ensure deterrence and to recover appropriate penalties."<sup>93</sup> Thus, while the

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91. Settlements with Los Angeles, California, and Key West, Florida, as reported in NMP HIGHLIGHTS (Feb. 1987), *supra* note 41.

92. U.S. ENVIRONMENTAL PROTECTION AGENCY, CLEAN WATER ACT PENALTY POLICY FOR CIVIL SETTLEMENT NEGOTIATIONS (Feb. 11, 1986) [hereinafter CIVIL SETTLEMENT NEGOTIATIONS].

93. *Id.*

NMP encourages negotiation and settlement, the agency places a good deal of importance on deterrence and will seek penalties in every case. The penalty policy is geared toward settlement of cases and provides a methodology for consistent penalty assessment nationwide, but also considers cases where no settlement can be reached. "In these cases which proceed to trial, the government should seek a penalty higher than that for which the government was willing to settle, reflecting considerations such as continuing non-compliance and the extra burden placed on the government by protracted litigation."<sup>94</sup>

The policy states that, among other considerations, penalties should, at a minimum, recover the economic benefit of non-compliance, be large enough to ensure deterrence, be consistent nationwide, and be arrived at logically. The penalty calculation method contains five separate components. Initial penalty calculations will consider the statutory maximum penalty in comparison to the 1) economic benefits of non-compliance in addition to a 2) gravity component which includes such factors as the significance of violations, health and environmental harm, the number of violations, and the duration of non-compliance. These initial penalty calculations will be adjusted by 3) factors such as the history of recalcitrance and the ability to pay, along with 4) litigation considerations and 5) mitigation projects by defendants.

In total, the policy recognizes the need to be sensitive to individual circumstances while maintaining consistency nationwide, but the policy makes one point loudly and clearly. When the EPA becomes involved in civil enforcement action, vigorous pursuit of substantial penalties is the norm, rather than the exception. While state officials are probably less likely to seek these penalties, EPA enforcement officials operate under a nationwide mandate to vigorously pursue civil penalties substantial enough to promote compliance.

#### NATIONAL STATUS

Data regarding nationwide compliance status varies with both the time and the source of information. As a result, a precise chart-

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94. NMP HIGHLIGHTS (June 1987), *supra* note 41.

ing of the upcoming task of enforcing the July 1, 1988 deadline is difficult to formulate. The charge of implementing the NMP is by no means a small task, and one can only guess at the number of enforcement actions and the resulting litigation.

Available EPA data<sup>95</sup> on MCP Major POTW's<sup>96</sup> indicates a universe of 1505 major facilities under the jurisdiction of the EPA and NPDES states. Of these, 1358 have achieved compliance or are on final schedule. The remainder either await action or have been referred to agencies such as the Department of Justice or State Attorneys General for future civil action. One hundred forty-seven upcoming civil actions nationwide does not seem to be such a large task, but this represents only "major" facilities, identified as a primary focus by the EPA's national policy.<sup>97</sup> While compliance by major facilities thus appears to be increasing, many "minor" facilities remain.

In a recent survey<sup>98</sup> by the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), involving 42 states, as many as 2830 minor facilities were identified as subject to the NMP. With the addition of these facilities, a nationwide total of over 3000 potential civil actions represents a very large task indeed, especially when one considers that the NMP calls for compliance or court ordered schedules by next July.

Enforcement responsibility for this large number of potential cases does not lie in the hands of one agency alone, however. The job is dispersed among the 37 states having NPDES primacy and the EPA, although the EPA maintains oversight responsibility in all cases.<sup>99</sup> In addition, the enforcement task will vary from state to state and among the EPA regions, depending in large part on the history of enforcement efforts in any particular location.

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95. Publicly Owned Treatment Works with flows of more than 1,000,000 gallons per day currently operating under a Municipal Compliance Plan (MCP).

96. Major facilities are defined as those with greater than 1,000,000 gallons per day flow.

97. NMP STATEMENT, *supra* note 60.

98. NMP HIGHLIGHTS (June 1987), *supra* note 41.

99. 33 U.S.C. §§ 1319(a) & 1342(i) (1982).

## STATE STATUS: WEST VIRGINIA AS EXAMPLE

The task faced by every state is also unpredictable. In a small state like West Virginia, for example, low population totals and densities might seem to indicate a relatively small number of NMP facilities. This is not necessarily the case, however. Even though West Virginia has only four "major" facilities identified as non-complying NMP facilities,<sup>100</sup> the geography of the state has resulted in a fairly large number of small communities with "minor" facilities.

West Virginia has identified approximately fifty-two minor facilities that will probably be unable to achieve compliance before the deadline.<sup>101</sup> Although this number is not staggering, the task of enforcing NMP objectives before July 1, 1988 has fallen on a relatively small number of individuals within the Department of Natural Resources' Municipal Waste Section and the Attorney General's Division of Environment and Energy. The process has already begun and will continue into 1988. Complaints have been prepared for these actions, and state enforcement officials have begun to vigorously pursue court-ordered compliance schedules in accordance with EPA policies.<sup>102</sup>

While completing this task, state officials must remain sensitive to the generally poor condition of local economies and the financial hardship that a large sewer project may cause. Certainly, no one can argue that the imposition of large up-front civil penalties will assist a financially troubled community

in meeting the ultimate goal of compliance. But state officials must walk a thin line between sensitivity for local concerns and EPA oversight. EPA's penalty policy strongly favors the use of civil penalties in addition to court-ordered schedules for their deterrent value alone.<sup>103</sup> Also, the EPA has recently expressed concern that states do not currently seek civil penalties for past violations with great

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100. See *supra* note 78. W. Va. DNR records indicate that, as of August, 1987, civil actions have been filed in two of these cases.

101. W. VA. DNR PERMIT FILES, *supra* note 51.

102. *Id.*

103. CIVIL SETTLEMENT NEGOTIATIONS, *supra* note 82.



vigor, are too lenient in establishing final compliance schedules, and rely too heavily on the availability of federal construction grant funds when making enforcement decisions.<sup>104</sup> Thus, while state officials may want to offer a "softer push" along with a helping hand toward compliance, EPA oversight strongly encourages them to be sterner in their enforcement actions. The future of EPA oversight action is yet to be determined, but state and local officials should be increasingly concerned with possible federal intervention. In the case of state officials, this concern means adopting a sterner approach to enforcement. In the case of local officials with responsibility for compliance, this concern means cooperating with state agencies whenever possible and hoping that the EPA does not become directly involved.

#### SELECTED CASES AND INTERPRETATIONS OF THE ACT

Recently decided cases have confirmed that the federal Act is a strict liability statute. In *Stoddard v. Western Carolina Regional Sewer Authority*,<sup>105</sup> the Fourth Circuit concluded that liability under the Clean Water Act is a form of strict liability. Similarly, in *United States v. St. Bernard Parish*,<sup>106</sup> a federal district court determined that the liability imposed for permit violations is a variety of strict liability where neither fault nor intent is relevant. Similar decisions have been reached in the Tenth Circuit<sup>107</sup> and in Indiana<sup>108</sup> as well.

The EPA has published information regarding several unreported cases which also support this interpretation of the Act. According to the EPA, the U.S. District Court for the Western District of Oklahoma issued summary judgment as to the issue of liability in *United States v. City of Moore, Oklahoma*.<sup>109</sup> In addition to ruling that the statute is one of strict liability, the court further said that

104. NMP HIGHLIGHTS (June 1987), *supra* note 41.

105. *Stoddard v. Western Carolina Regional Sewer Auth.*, 784 F.2d 1200, 1208 (4th Cir. 1986).

106. *United States v. St. Bernard Parish*, 589 F. Supp. (E.D. La. 1984).

107. *United States v. Earth Sciences, Inc.*, 599 F.2d 368 (10th Cir. 1979).

108. *United States v. Town of Lowell*, 637 F. Supp. 254 (N.D. Ind. 1985).

109. *United States v. City of Moore*, No. 84-618E (W.D. Okla. Nov. 27, 1985) (discussed in

evidence of progress and effort by the city did not relate to the question of guilt but may be considered in assessing penalties. The decision in *United States v. Blytheville*,<sup>110</sup> also supports the strict liability nature of the Act. In addition to ruling in favor of strict liability, the EPA reports that the federal district court in that case further held that compliance with the Act is not contingent upon the receipt of federal grant funds.

Many of the civil actions initiated by the EPA are settled without trial, so the decisions of the courts are limited in number. However, these settlements do indicate conformation to the EPA's penalty policy. In an October 2, 1986, consent decree entered in a case against Los Angeles, California, the city agreed to an up-front civil penalty of \$625,000 in addition to other provisions including a fixed-date compliance schedule.<sup>111</sup> The City of Key West, Florida accepted a \$600,000 up-front civil penalty, in addition to a provision requiring the city to deposit \$125,000 annually into escrow to cover possible stipulated penalties in a May 13, 1986, consent decree.<sup>112</sup> Stipulated penalties provisions for future violations of permits and schedules included in consent decrees have also been upheld by the courts. The EPA points to *United States v. Joint Meeting-Rutherford, East Rutherford, Carlstadt*,<sup>113</sup> as an example. According to the EPA, the federal district court imposed stipulated penalties against the defendants as required by the consent decree entered in the case. This case indicates the seriousness with which both the EPA and the courts view such decrees and the importance of court-imposed schedules.

The geographical and jurisdictional diversity of these cases seems to indicate a nationwide trend of interpreting the CWA as a strict liability statute. Given this trend and the clear wording of the statute, it seems unlikely that a state court or other federal jurisdiction will disagree.

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110. *United States v. Blytheville*, No. J-C-85-125 (E.D. Ark. Aug. 28, 1986) (discussed in NMP HIGHLIGHTS (Feb. 1987), *supra* note 41).

111. *EPA v. City of Los Angeles*, No. CV-773047HP (C.D. Cal. Oct. 2, 1986) (discussed in NMP HIGHLIGHTS (Feb. 1987), *supra* note 41).

112. *EPA v. City of Key West*, No. (S.D. Fla. May 13, 1986) (discussed in NMP HIGHLIGHTS (Feb. 1987), *supra* note 41).

113. *United States v. Joint Meeting - Rutherford, East Rutherford & Carlstadt*, No. 84-2744 (D.N.J. Nov. 15, 1985) (discussed in NMP HIGHLIGHTS (Feb. 1987), *supra* note 41).

### CONCLUSION

While the time remaining before July 1, 1988, grows increasingly short, the deadline for compliance seems firm. The law is clear, and given its strict liability nature, violations are easily proven. Publicly Owned Treatment Works must comply with the effluent limitations required by the Act and by individual state water quality standards.

State and federal officials are serious about enforcing the Act according to the EPA's National Municipal Policy and will vigorously pursue judicially enforceable compliance schedules. Civil and criminal penalties can be substantial for violators and may be strictly applied. The best advice to local communities and to POTW operators is to cooperate with enforcement officials wherever possible and make every effort to achieve compliance as soon as possible. While a very difficult task, achieving compliance is far superior to the alternative of failing to comply and thus being subjected to civil and criminal penalties.

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