



**Association of State and Interstate  
Water Pollution Control Administrators**

---

1221 CONNECTICUT AVENUE, N.W. 2<sup>ND</sup> FLOOR • WASHINGTON, DC 20036 • TEL: 202-756-0600 • FAX: 202-756-0605 • WWW.ASIWPCA.ORG

October 18, 2007

## **35 Years of the Clean Water Act: Progress and What the Future Holds**

The Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) appreciates this opportunity to share State and Interstate water pollution control managers' perspectives on the success of the Clean Water Act and the challenges the future holds. I, Linda Eichmiller, as the Executive Director of ASIWPCA, am pleased to provide the membership's perspective on these important issues.

The 1972 Clean Water Act was built upon existing State programs and a vision on the partnership needed to achieve its goals related to the physical and biological integrity of the nation's waters.

State and Interstate water quality programs have become sophisticated, complex and broad reaching over the last 35 years. The Clean Water Act has provided a highly effective statutory framework for improving our nation's waters. However, this is a good time to consider adjustments which could facilitate further progress in improving and maintaining water quality in this country. In my testimony, I will address four issues: major accomplishments, the extent to which the Clean Water Act is up to the tasks we face, future challenges, and the kind of discussions we need to have to move forward with a strengthened water quality program.

### **Major Accomplishments:**

**Surface water quality restoration and improvement:** Rivers, streams, lakes and estuaries throughout the nation have become fishable and swimmable as a direct result of the Clean Water Act to the extent that the latest generation of children has not observed the pollution known by previous generations. This has benefited not only the environment, but also the economy. Water quality impairments from point source pollution have been significantly reduced but there is still considerable work to do.

**Infrastructure investment to improve water quality:** Water quality improvements did not just happen. Major investments have been made by virtually every city, town and industry in water pollution control. For example, \$460 - \$560 Billion has been invested in municipal infrastructure. It is important to note that the original Federal investment was made through a construction grants program that provided 75-85% funding for municipal treatment plant construction. We could never have had the surge of water quality improvements that occurred in the 1970's and 1980's without this level of Federal investment. This was followed by the Clean Water State Revolving Loan Fund, which has provided \$66 Billion in Federal funds for low interest loans. Federal funds have been leveraged with State funds to assist many communities that otherwise would be unable to affordably address water quality problems.

**State Regulatory Program Development:** Comprehensive water pollution control programs have been put into place at the National, State, regional and local levels as a direct result of the Clean Water Act. A strong State/Federal partnership has developed – with National consistency tempered by State flexibility. Section 106 grants to the States continue to be the best investment of Federal funds for direct implementation of the Clean Water Act. These funds provide valuable and cost effective resources for water quality monitoring, NPDES permitting, and technical support to publicly owned treatment works. The States have historically

had flexibility to set priorities with local stakeholders as to how to best use these funds - this has worked well. However, I must note that we have recently experienced increasing Federal strings on these funds that we believe are counterproductive.

**Public Participation:** The Clean Water Act included requirements to ensure public involvement in all facets of program implementation that have been key to the successes of the program. This has spawned a permanent public interest at the local level in clean water that is unique and is key to the future success of our Nation's clean water programs.

**Informed decision making based on real water quality monitoring:** The Act requires that States regularly assess the quality of our waters and report on findings. This has served to inform the Congress and the public on the state of the Nation's waters as well as to focus on the highest priority water quality problems at the local or watershed level. The flexibility built into the Act to adjust priorities at the State and local level has been a key to our successes over the last 35 years. However, there have recently been disturbing increases in Federal limitations that hamper State creativity to address state needs.

### **Can the Clean Water Act Achieve Its Stated Goals?**

**Yes. As I have just mentioned, we have made significant strides. However there is much to do and many issues have emerged that were not contemplated when the Act was first passed into law.** The interim goal of fishable / swimmable waters needs to be maintained as a focus, even after 35 years. Improvements in wastewater treatment have caused this goal to be attained in many waters actually more quickly than would have been predicted by scientists at the onset of the Act. But there still is much work to do in many locations and there are numerous emerging issues that need to be addressed. These include the identified needs to:

- Better control nonpoint source pollution,
- Provide even higher levels of treatment for nutrient removal at wastewater treatment plants, and
- Research new issues such as the impacts of personal care products and pharmaceuticals on surface water environments.

Solutions to these issues are likely to be costly and complex. And, going forward, innovative treatment techniques and creative regulatory solutions beyond traditional command and control responses will be required. The flexibility contemplated in the original Clean Water Act for the States to develop creative solutions at the State level is key to our future success in making improvements. Frankly, we believe that this will ultimately require a substantial shift in Federal philosophy as evidenced by the ever increasing strings tied to Federal grants such as the Section 106 monitoring set asides and the USEPA's permit fee rules.

### **Major Challenges That Lie Ahead**

**Investment is required to address aging infrastructure and to comply with substantially more stringent NPDES permits:** This is critical. As noted above, many publicly owned treatment plants were constructed in the late 1970's and early 1980's to meet new permit requirements under the new Clean Water Act. These improvements were funded by 75% federal construction grants and then low interest SRF loans. NPDES permits are also becoming more stringent to address nutrient, metals, and other issues. Upgrades will be required at substantial cost to address these issues and the use of state-of-the-art technologies, which continue to be developed and improved with time. There is a major funding gap which makes these improvements potentially unaffordable for low to moderate income households.

**Contamination of water bodies caused by air pollution:** We now know that water pollution is also caused by air pollution. Acid rain and mercury contamination, which render fish unsafe to eat are caused by

emissions from smoke stacks that can be hundreds of miles away. Resolution of these issues requires an intersection of the Clean Air Act and Clean Water Act not remotely contemplated 35 years ago.

**Climate change is a serious long term issue:** This is projected to bring increased temperatures, rising sea levels, changing weather patterns. We must be prepared for these major impacts.

**Integrated and Interstate watershed approaches are needed:** Creative solutions are needed to resolve other complex issues that are watershed, not jurisdictional, based. These include: the integral relationship between water quality and quantity, instream flow needs, effluent discharges, nonpoint sources, and stormwater. Informed and science-based decisions require sufficient and reliable water quality data which takes financial resources.

### **Major Conversations That Should Be Considered To Address These Challenges**

**A huge gap exists between the financial resources needed by States and Interstate agencies to implement Clean Water Act mandated programs and the levels available** – approaching a billion dollars annually. The gap for infrastructure funding exceeds \$300 Billion. Those gaps will likely never be closed. A consensus is needed on the Federal, State and local roles on how to bridge these funding gaps. Programs and requirements that require significant resources without a return of commensurate value should be revisited. As well as the infrastructure funding gap, there is a very significant gap in program funding provided to the States. We would be happy to provide you with more details on both of these issues at a later date.

**States need flexibility to focus the limited available resources on the highest priority water quality problems in each State.** These problems vary across the States. States are increasingly constrained by Federal funding strings and bureaucracy. States can do better with greater flexibility and are fully prepared to be accountable for the results.

**The traditional approaches contemplated in the Act may not be suitable for dealing with some pollutants, e.g. mercury, nutrients, household and personal care products and pharmaceuticals.** We need creative approaches to solve these problems faster and more cost effectively.

**Clean Water Act jurisdiction requires clarification:** For example, how should the Act broadly cover surface waters including intermittent and ephemeral streams and not be handicapped by complicated and inconsistent court decisions. And, should the Act be changed to resolve recent, sometimes conflicting, court decisions? Congress has an important role in addressing that issue.

### **Summary:**

In conclusion, the Clean Water Act is sound and has been an effective to improve the Nation's waters. Nonetheless, we encourage consideration of possible statutory and administrative improvements in light of the lessons learned, scientific advancements, and other issues that have emerged since the Clean Water Act passed into law 35 years ago.