


ACTION PLAN TO IMPLEMENT RECOMMENDATIONS
ADVOCACY & POLICY CAMPAIGNS
Resolve Conflicts between Rules and Regulations Regarding Drinking Water, Wastewater, Stormwater, and Surface Water

Revise state laws and regulations to address drinking water, wastewater, stormwater, and surface water quality as a single integrated system in order to resolve conflicts between competing internal rules and requirements.

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Introduction

One challenge that municipalities face when working to protect water quality is complying with conflicting state regulations on water resources. A watershed-wide advocacy campaign will help educate residents and state agencies about problems that these regulatory conflicts create, and ultimately, motivate state leaders and legislators to untangle them.

Background

Municipal leaders in the Delaware River Watershed, and nongovernmental groups that work with municipalities, are already aware of some of these regulatory conflicts. The smart growth advocacy group 10,000 Friends of Pennsylvania observed in its 2007 *Water and Growth* study that “water laws [in Pennsylvania] are scattered throughout many statutes and applied by many different agencies and entities. They address specific topics...but together do not add up to a unified legal framework for comprehensive water management” (*Water and Growth*, 2007, 15).

The *Water and Growth* study highlights 13 laws with potentially problematic interactions, including the Clean Streams Law (Pennsylvania Department of Environmental Protection [PA DEP]), the Delaware River Basin Compact (Delaware River Basin Commission), the Municipal Planning Code (Commonwealth of Pennsylvania), the Safe Drinking Water Act (PA DEP), and the Water Resources Planning Act (PA DEP). From its analysis, 10,000 Friends of Pennsylvania concluded that the state should “promote a comprehensive approach to water and land use that coordinates drinking water, wastewater, stormwater, and land use across multiple boundaries” (*Water and Growth*, 2007, 33).

The idea of a comprehensive approach resonated strongly with the Municipal Technical Assistance Advisory Panel tasked with guiding the development of recommendations for municipal water quality actions in the Delaware River Watershed. While *Water and Growth* focused on Pennsylvania, it is possible to find communities in all four states within the Delaware River Watershed that report they are struggling to protect water quality while complying with multiple state regulations. During the interview phase of this project, municipal leaders and other water quality “champions” provided anecdotal evidence of such conflicts (see the “Conversations on Conflicts” callout box).

Conversations on Conflicts

Water quality experts and municipalities mentioned the following regulatory conflicts in interviews:

“There are municipalities that would like to take a greater role in watershed protection, but there are restrictions that are put on municipalities by the State of New Jersey, such as for stream cleaning and shoreline protection, where the state restricts/redirects development.”—Water quality expert, NJ

“Farmers on a preserved farm needed to construct a poultry facility. They wanted to place it on the less important soils of the preserved farm, but these soils were near wetlands. PA DEP said the process to permit a development near wetlands would take one year. The farmers could not wait that long, so they had to place their barn on a prime soil area that was not near the wetlands.”—Water quality expert, Berks County, PA

“Uncertainty on what’s allowed or not allowed is a big problem—between EPA, PA DEP, and court agreements; the rules keep changing, so you may submit one project and think it will be approved, and then it’s not due to changing rules.”—Municipal interviewee, East Goshen, PA

Program Concept

This recommendation requires significant “grassroots” advocacy from citizens and “grass tops” revision of regulations from legislative bodies and agencies at the state level. The commitment of a wide range of experts, to determine what the conflicts are and how best to untangle them, is also critical to its success. A general program concept includes researching regulatory conflicts, planning and executing a campaign, revising the target regulations, and enforcing the revised regulations. While these program phases are presented linearly below, they may overlap or be repeated due to new opportunities or changing circumstances.

Research Phase

A project team of experts (see the “Partners” callout box) develops a list of: (1) state water regulations in the Delaware River Watershed that have the potential to conflict in a way that affects municipal water quality actions; and (2) examples from personal experience, or from a colleague’s experience, of how conflicting state water regulations have affected municipal water quality actions. Examples include those mentioned previously from the municipal and water quality expert interviews. 10,000 Friends of Pennsylvania’s *Water and Growth* study also lists potential problems:

- The Safe Drinking Water Act applies to ground and surface waters but not to small water systems or waterline extensions. Furthermore, it prioritizes “new and expensive” water treatment infrastructure over land protection strategies. New infrastructure expands a municipality’s capacity to provide drinking water, potentially yielding additional development and degradation of the community’s open space and waterways (*Water and Growth*, 2007, 17).

Partners

The project team that forms to implement this recommendation should include lawyers with expertise in state and local laws on water resources and other complementary issues, water quality experts, environmental activists, municipal leaders, municipal utility managers, and engaged politicians at the state level.

- The Water Well Drillers License Act, a licensing and recordkeeping program for drillers of groundwater wells, does not address water quality (*Water and Growth*, 2007, 17).
- Pennsylvania relies on common law for some water issues, but this set of laws was developed before it was understood that groundwater and surface water were connected, resulting in different rules guiding the use of each source separately (*Water and Growth*, 2007, 18).

The project team then determines what revisions to existing regulations would eliminate these conflicts and enable the region's water resources to be managed more holistically.

Campaign Planning Phase

The team chooses which regulatory conflicts should be the focus of an outreach campaign and brings in campaigning/communications/marketing experts. This expanded group develops strategies for: (1) growing a volunteer base in communities (such as in voting districts), states, and/or the watershed; (2) running a campaign to teach groups of citizens, lawmakers, and agency leaders about the regulatory conflicts and benefits of removing these conflicts; and (3) continued education to ensure that the new or updated regulations are enforced in the long term.

Campaigning Phase

The project team moves forward with its campaign, growing its support base and revising its strategies as needed.

Revision Phase

With sufficient outreach and pressure from the campaign group and constituents, lawmakers and agencies begin taking steps toward revising the conflicting regulations.

Enforcement Phase

Key members of the original team, or new members from the campaign, work to ensure that the new regulations are enforced.

Anticipated Outcome

The end result of this multistep process of research, prioritization, planning, campaigning, and revision is that state regulations affecting water resources will support rather than undermine each other, yielding a complementary system of laws that municipal staff, officials, and property owners can understand and follow with more confidence as they work to protect their water quality.

Funding Sources

While the portion of the recommendation that involves research could be funded from many public and private sources, the portion that involves advocacy to state lawmakers cannot be supported by public funds. Most of the activities listed in this recommendation will have to rely on a mixture of support from nongovernmental organizations, individual donors, and in-kind volunteer services.

Choosing Regulatory Conflicts

The following criteria could be used to choose regulatory conflicts on which to focus:

- impact of revising the regulation (number of municipalities affected, number/type/area of impaired watersheds affected, etc.);
- ability of an issue or real-life example to grab the interest of citizens and lawmakers;
- presence of lawmakers who are already interested in the topic;
- ease of “untangling” the regulations (easy wins, especially in the beginning of the process, would help increase support for the harder ones); and
- availability and type of funding.

Source

Scott, Marianne and Elizabeth Kitchel, with Edward W. Wilson and James McElfish. *Water and Growth: Toward a Stronger Connection between Water Supply and Land Use in Southeastern Pennsylvania*. Harrisburg, PA: 10,000 Friends of Pennsylvania, 2007. http://10000friends.org/sites/10000friends.org/files/water_report_07_final_with_covers.pdf (accessed August 8, 2017).

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