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New Law Aims to Improve Water Infrastructure Planning for Municipalities: Barnes & Thornburg

The Water Infrastructure Improvement Act (H.R. 7279), which became law on Jan. 14, 2019, amends the Clean Water Act (CWA) to codify 2012 EPA guidance on flexible, cost-effective approaches to integrated infrastructure planning for municipalities. The act provides municipalities with the tools to prioritize investments in wastewater and stormwater projects and to more easily comply with CWA requirements.

Barnes & Thornburg worked closely with U.S. Conference of Mayors and the National Association of Clean Water Agencies in developing the Water Infrastructure Improvement Act and lobbying for its passage.

The act allows communities to incorporate integrated plans directly into their National Pollutant Discharge Elimination System (NPDES) permits to update water infrastructure and achieve CWA compliance. NPDES permits that incorporate integrated plans can address CWA regulatory requirements related to any or all of the following:

- combined sewer overflows
- capacity, management, operation and maintenance programs for sanitary sewer collection systems
- municipal stormwater discharges
- municipal wastewater discharges
- water quality-based effluent limitations to implement an applicable wasteload allocation in a total maximum daily load

Additionally, a permittee's integrated plan can include innovative water reuse projects and green infrastructure. The act allows NPDES permits to include compliance schedules to allow for the implementation of integrated plans, and those schedules, if authorized, can exceed a single permit term.

The act also includes several important provisions that relate to CWA municipal issues other than integrated planning. For example, it establishes an Office of Municipal Ombudsman within EPA to support cities in complying with the CWA by providing technical assistance, federal financial assistance information, and information on integrated planning opportunities.

Further, the act requires EPA to promote the use of green infrastructure in CWA permitting, enforcement, planning, research, technical assistance, and guidance. The act is also designed to ensure coordination in the use of green infrastructure between EPA, other federal agencies, state governments, tribal and local governments, and the private sector.

Within two years of enactment, EPA will provide an update to Congress regarding all integrated plans that have been developed and implemented under the CWA since the publication of EPA's 2012 guidance.

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