

# 2025 National Stormwater Policy Forum, Briefing Document on Key Themes and Ideas

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This briefing document summarizes the main themes and important ideas discussed during the "2025 National Stormwater Policy Forum." The excerpts cover a range of topics, including federal funding and policy updates, state-level implementation, legal challenges impacting stormwater management, and ongoing efforts by organizations like WEF and NAMS.

## I. Federal Policy and Funding Landscape:

- Aging Infrastructure and Funding Gaps: Joe Kane from Brookings highlighted the significant funding gap for water infrastructure, including stormwater, despite the "historic infusion" from the Bipartisan Infrastructure Law (BIL) (also referred to as IIJA). He stated that the \$55 billion allocated is far less than the estimated needs ranging from \$744 billion to almost \$200 billion.
- "You know, we haven't put a dent into just the funding gap here and now."
- Uncertainty in Federal Funding: Kane emphasized the "lot of uncertainty" surrounding future federal funding, with many "nonwater folks" questioning the implications of current policy. He cautioned against "sky is falling" narratives, stressing the continued need for planning and investment despite the uncertainty.
- "I think there's just a lot of uncertainty is my general sense of this."
- Importance of State Role: Kane underscored the critical role of states in implementing federal funding, particularly through State Revolving Funds (SRFs). He noted that a significant amount of BIL funding is channeled through these state programs.
- "I really think it is important to look at the state role in in these issues."
- Capacity Challenges at State and Local Levels: A major theme was the lack of "fiscal, technical, and programmatic capacity of utilities and other applicants to even access" available funding. Kane's research on state

Intended Use Plans (IUPs) for SRFs revealed that staffing shortages and unclear definitions of technical assistance are prevalent challenges.

- "I feel like a lot of people just throw that [technical assistance] around and they don't even know what it means."
- His analysis of IUP documents showed that "very rarely are we seeing this really defined or or or measured or recognized across these plans" regarding staffing capacity.
- Need for Dedicated Green Infrastructure Funding: Kane's analysis also indicated a lack of clearly defined "dedicated funding mechanisms... around green infrastructure" within state SRF plans.
- Shift Towards Loans and Competitive Programs: Kane pointed out the increasing reliance on loan programs like WIFIA, emphasizing the need for local leaders to understand the financial implications and the importance of "skin in the game."
- Federal Updates: Tim Petty (House Transportation and Infrastructure Committee) and Ed Higgins (Senate Environment and Public Works Committee) were slated to provide congressional updates, indicating ongoing legislative activity relevant to stormwater management. Chris Clauss (EPA) later provided updates on EPA programs, including the Multi-Sector General Permit (MSGP) and the Construction General Permit.

## II. Legal and Regulatory Developments:

- Loper Bright Enterprises v. Raimondo and the Demise of Chevron Deference: Fred Andes explained the Supreme Court case Loper Bright and its overturning of Chevron deference. This means courts will no longer defer to an agency's "reasonable" interpretation of an ambiguous statute but will instead determine the "right" interpretation themselves.
- "The court now has said 'No no no That's not the rule anymore We don't care if it's reasonable We care if it's right.'"
- Andes noted that this primarily affects legal interpretations, not factual or scientific issues where Skidmore deference may still apply. He cautioned that this ruling could have varied impacts, potentially benefiting or hindering regulation depending on the court's interpretation of the statute.
- City of San Francisco v. Sheehan and Narrative Effluent Limitations: Amanda Aspoore detailed the Supreme Court's decision in City of San Francisco v. Sheehan, which addressed the lawfulness of "end result requirements" (often narrative limitations like "discharges shall not cause or contribute to the violation of water quality standards") in NPDES permits.
- The Court found that "these end result requirements are not lawful in NIP's these permits," specifically those that "do not spell out what a permit must do or refrain from doing."

- Aspre highlighted concerns from permittees about the lack of clarity and the implications for planning infrastructure investments and the permit shield provision.
- Becky Hammer offered a "hot take" that this might not significantly affect MS4 permits due to the prevailing "maximum extent practicable" (MEP) standard, which is more technology-based.
- However, panelists agreed that the ruling is "confusing" and its impact on existing permits and narrative limits will need to be carefully evaluated state by state. There is concern that it could lead to a push for more numeric limits in permits.
- The Court explicitly stated that "narrative provisions generally speaking are fine again as long as they tell you what to do or not do," and BMPs are likely to remain lawful.
- Residual Designation Authority (RDA) for Previously Unregulated Discharges: Becky Hammer discussed ongoing efforts to utilize EPA's RDA under the Clean Water Act to regulate commercial, industrial, and institutional stormwater discharges not currently permitted.
- Petitions have been filed in regions like Los Angeles and New England seeking regulation of sites based on impervious cover and potential water quality impacts.
- EPA Region 9 finalized a designation in Los Angeles watersheds, requiring permits for sites with over 5 acres of impervious cover. A draft permit is in progress. A similar effort is underway in the Boston area.
- The intent in some cases is to transfer TMDL burden from MS4s to these newly regulated entities. MS4 communities may see this as beneficial in regulating larger entities.
- However, concerns remain about the administrative burden and funding needs for states to implement such expanded permitting programs.
- Regulation of PFAS in Stormwater: Sean Roland provided an overview of the complex issue of PFAS regulation at various levels of government.
- He highlighted EPA's strategic roadmap for addressing PFAS and various initiatives, including national monitoring, drinking water standards (MCLs), effluent limit guidelines, and monitoring requirements in NPDES permits.
- The draft MSGP includes quarterly indicator monitoring for PFAS for industrial sources known or suspected of using PFAS in their processes.
- Concerns were raised about the availability of lab capacity for widespread PFAS monitoring and the need for clarity on how to address PFAS sources, including run-on from other properties.
- The potential for CERCLA liability related to PFAS was also discussed, with concerns that the "useful products exemption" might limit the liability of chemical companies.

- There is an expectation that PFAS will be increasingly integrated into MS4 permit requirements at the state level, with local governments needing to prepare for potential monitoring and management measures.

### III. Organizational Initiatives and Recommendations:

- WEF and NAMSAs Policy Recommendations: Steve Dye outlined the annual policy recommendations document developed jointly by WEF and NAMSAs. Key priorities include:
  - Increased federal investment in clean water and stormwater infrastructure.
  - Support for the Clean Water State Revolving Fund (CWSRF).
  - Funding for EPA to conduct the Clean Watershed Needs Survey.
  - Support for Centers of Excellence to promote better stormwater management.
- Market-Based Incentives and Funding Approaches: Andy Sauer discussed the need to explore market-based approaches and creative funding mechanisms for stormwater infrastructure, given increasing demands and limited resources. This includes pay-for-performance models and community-based grants.
- National Stormwater Day: Steve Dye promoted National Stormwater Day (November 17th in 2025) as an awareness-raising effort.
- STEPP (Stormwater Testing and Evaluation Products and Practices): Seth Brown highlighted the STEPP program, which serves as a "consumer reports for stormwater," providing testing and evaluation of various stormwater infrastructure technologies and practices.

### IV. State-Level Perspectives:

- Maryland's Approach: Zach Schaefer (Maryland Department of the Environment) shared Maryland's experience as a "water state" heavily impacted by stormwater.
- Maryland utilizes various tools, including the Chesapeake Bay TMDL, a bay restoration fee ("rain tax"), and its MS4 program, to manage stormwater effectively.
- The state has seen success with ambitious targets for county MS4s and is exploring innovative financing like a pay-for-success program for green infrastructure.
- Challenges remain in areas like mitigation banking and addressing the increasing need for maintenance of aging stormwater infrastructure.
- The interconnectedness of water quality and water quantity issues is increasingly recognized.
- Importance of State Leadership: The forum highlighted the crucial role of states in implementing federal policies, addressing local needs, and potentially going beyond federal requirements in stormwater management.

Overall Themes:

- Significant and Growing Need for Stormwater Infrastructure Investment.
- Increasing Regulatory Complexity and Legal Uncertainty.
- Emphasis on Innovative Funding and Management Approaches.
- Growing Focus on Emerging Contaminants like PFAS.
- The Critical Role of Collaboration and Information Sharing Among Federal, State, and Local Entities.
- The Importance of Raising Public Awareness about Stormwater Issues and Funding Needs.

This briefing provided a snapshot of the key discussions at the 2025 National Stormwater Policy Forum excerpts, highlighting the multifaceted challenges and opportunities in the field of stormwater management.

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