COMMENTARY

The Clean Water Action Plan

BY BARBARA LABARBARA

On the 25th anniversary of the Clean Water Act (CWA), Vice President Al Gore directed federal agencies to develop a comprehensive plan revitalizing the nation's interest in protecting our water resources.

The result was the Clean Water Action Plan (the Plan or CWAP), which focuses on regulating nonpoint-source (NPS) pollution. A federal bureaucratic gold mine, the plan is far-reaching, innovative and costly.

The Clean Water Act

The CWA is a federal law passed by Congress in October 1972. It focuses on point-source pollution. In the early 1990s point-source pollution had, for the most part, been conquered.

Point sources are easily recognized as pollutants and toxic waste flowing from a specific point, such as a pipe from an industrial site. Industry and municipalities have been recognized as the main contributors. Over the past 25 years, point-source polluters have been penalized, regulated and forced to clean up to the tune of more than $75 billion.

In addition, federal and state governments have spent billions. During this time, water quality improved dramatically.

Through the CWA, Congress deliberately left NPS pollution primacy to the states.

NPS pollution is less obvious and contributes to waters via surface runoff, movement of water through the ground, or air deposition. According to the CWAP first-year report, the majority of water-quality problems are caused by NPS runoff from agricultural lands, residential areas, city streets, forests and pollutants settling out of the air.

States report that agricultural sources account for approximately 70% of the identified water-quality problems in assessed rivers, 49% in lakes and 27% in tributaries.

"The only way to regulate NPS pollution is to regulate virtually every land-management activity," says Bobbie Frank, executive director of the Wyoming Association of Conservation Districts (WACD).

The Clean Water Action Plan

The Plan is an executive order signed by the vice president. Developed in 120 days, it was published in final form on Feb. 19, 1998. Implementation started immediately without congressional review or public comment.

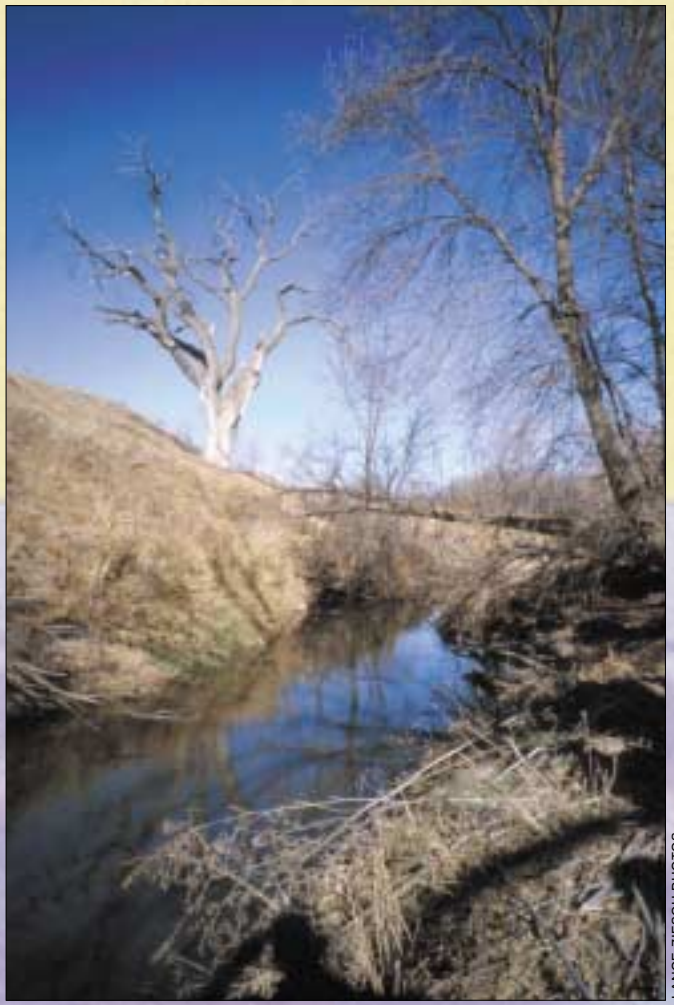
Partners in the Plan include the Environmental Protection Agency (EPA); the departments of Energy, Commerce, Interior, Justice, Agriculture, Transportation and Defense; National Oceanic and Atmospheric Administration; the Tennessee Valley Authority and the Army Corps of Engineers.

One of the Plan's missions is to promote a strong relationship between federal, state, tribal and local governments to support its goals and achievements.

The Plan was initiated with a five-year funding proposal to provide approximately $2.3 billion in new funds. In 1999 Congress funded $171 million, one-third of the requested $568 million. An additional $100 million in funding from CWA dollars was included in 1999 and 2000. Funding for the Plan is budgeted through several different agencies, making the dollars hard to follow.

In February 1999 the first-year report was published, numbering and listing the Plan's 111 key actions. Twenty-two had been completed at that time. The actions were being implemented at the rate of one every 20 days.

Author's note: *Information for this article was gathered with the help of the Wyoming Association of Conservation Districts; through the government's clean-water Web site,* www.cleanwater.gov; *and the* Clean Water Action Plan, Senate Environment and Public Works Committee *hearings video from the Purdue University Public Affairs Video Archives.*



LANCE ZIESCH PHOTOS

Key actions for agriculture

Action #94—Unified Watershed Assessments (UWA)

What is a watershed? The Plan describes watersheds as nature's boundaries for water resources. When rain or snow falls, water flows downhill through brooks, wetlands, drains and ditches into streams, rivers and lakes to the ocean.

The water may percolate through the soil to become groundwater. As it flows, water picks up pollutants, sediments or debris. As a result, physical, chemical and biological processes — including human activities — affect the quantity and quality of water in the collecting watershed. The U.S. Geological Survey has divided the states and territories into

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2,149 basic watershed units.

The watershed approach is a key organizing principle behind the Plan. Fourteen of the 111 key actions relate to watersheds. Action #94 is the most comprehensive. This action calls for states to classify watersheds into one of four categories:

1. Impaired (not meeting state water-quality standards or natural-resource goals).
2. Threatened (meeting state water-quality standards; however, in threat of not meeting standards).
3. Pristine/sensitive (federal-lands watersheds).
4. Insufficient data to categorize.

The EPA implemented this action in 1998 and required states to comply in less than 80 days. The intent, according to EPA, was to focus federal resources on the biggest water-quality problems. If states did not categorize their watersheds, they could not receive additional funds.

Federal resources are available for priority-one watersheds. In almost every case the entire watershed has to be declared impaired, and in every case only a small portion of the river is impaired. For example, in northern Wyoming, the Belle Fourche Watershed houses more than 2 million acres or more than 24,000 miles of surface water. A total of 34 miles of surface water is actually impaired. Even though only a small percentage of the watershed is impaired, the Wyoming Department of Environmental Quality (DEQ), under the UWA, had to declare the entire watershed impaired to receive federal resources.

Indications are that information submitted by the states regarding watersheds would be used to target future regulatory actions.

The CWA law requires identifying only segments of impaired water, which is in conflict with the Plan.

Action #82—EPA/USDA National Unified Animal Feeding Operation (UAFO) Strategy

The U.S. Department of Agriculture (USDA) and EPA have developed a national strategy aimed at addressing pollution from animal feeding operations (AFOs). According to the Plan, AFOs are agricultural enterprises in which animals are kept in confined situations. AFOs congregate animals, feed, manure, urine, dead animals and production operations on a small land area.

There are approximately 450,000 AFOs in the United States. Concentrated animal feeding operations (CAFOs) house 1,000 or more animals.

The CWA gives the EPA authority to regulate CAFOs. Under the CWA, in order for an AFO to be considered a CAFO, a facility must meet the following definition:

1. Facility where animals have been, are, or will be confined for a total of 45 days or more in any 12-month period.
2. Where crops, vegetation or forage growth are not sustained over any portion of the facility in a normal growing season.
3. More than 1,000 animal units are confined at the facility.

Under the Plan, EPA added:

1. From 301 to 1,000 animal units are confined to the facility, and it also meets one of the specific criteria addressing the method of discharge.

An AFO can be designated a CAFO on a case-by-case basis if it is determined to be a significant contributor of pollution.

The EPA's Office of Science and Technology (OST) establishes effluent limitation guidelines for feedlots. If the AFO is located in an impaired watershed, even if it is not located on or near a river, EPA will regulate it.

Actions #20, #21 and #27—Forest transportation regulations

The U.S. Forest Service is currently conducting a National Environmental Policy Act (NEPA) analysis on the closure of forest roads.

Action #20 relocates and decommissions forest roads as part of President Clinton's 40-million-acre roadless area plan.

Action #21 will increase maintenance of forest roads and trails on federal lands to improve water-quality protection for more than 2,000 miles of roads and trails per year through 2005. It will decommission or obliterate 5,000 miles/year from 1998 to 2002.

The effect of obliteration of forest roads and trails will reduce and eliminate multiple use on forestlands.

Action #27 is a combination of management activities, including revegetation, soil-stabilization measures, stream protection and restoration, and grazing adjustments. The U.S. Forest Service and the Bureau of Land Management (BLM) will accelerate range allotment planning, implement management changes, and accelerate restoration actions to restore the sustainability, function and diversity of rangeland ecosystems. This process will be accomplished through improved allotment management decisions and development of a standardized rangeland health inventory, classification and monitoring system by this year. The effect of this action calls for adjustments in allowable AUMs (animal unit months) under the guise of improved riparian and rangeland health. It will result in

decreased multiple use and economic activity generated by the livestock industry dependent upon public land permits.

Action #36—Review of federal licensing and use authorization

Action #36 says federal land- and resource-management agencies will work with states and tribes to review existing processes ensuring that the issuance and renewal of use authorizations and licenses adequately address water-quality protection and compliance measures. It will revise and upgrade those processes.

This action will affect all uses currently permitted or licensed on federal land, including timber, oil and gas, mining, recreational activities, ditches, dams, and water developments. The intent is to limit or restrict existing and future activities in our national forests.

Action #39—Increase Corps restoration by 50%

Action #39 directs the Army Corps of Engineers to increase by at least 50% the wetlands restored and enhanced throughout its programs.

This action calls for nontraditional strategies to conserve wetlands, including the purchase of easements and land acquisition. Increased federal ownership of land will have a negative effect on the tax base and future development opportunities.

Action #41—Wetlands restoration in 500 watersheds

The goal of Action #41 is a net increase of 100,000 acres of wetland per year by 2005, or 500,000 acres. The EPA is working with other government agencies on community-based wetlands restoration projects in 500 watersheds.

Wetlands benefit natural water-quality improvement, flood protection, and habitat for unique plants and animals — endangered species.

Much of the wetland argument grows out of the interpretation of true wetlands and perceived wetlands. It is basically up to individual regulatory agencies to decide what is a wetland. One agency declared a "dry swell" a wetland because it has had water in it at some time. A BLM Riparian-Wetland Initiative dated September 1991 defined wetlands as areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support vegetation. Wetlands include marshes, shallows, swamps, lakeshores, bogs, muskegs, wet meadows, estuaries and riparian areas. Wetlands are not defined in the Plan.

It has been said that, "A wetland is anything a government agent wants it to be."

SHAUNA HERMEL PHOTO

NPS pollution is less obvious and contributes to waters via surface runoff, movement of water through the ground, or air deposition.

Lawsuit against EPA and USDA

The WACD filed a lawsuit against the EPA and the USDA on the Plan. There are 67 parties to the CWAP complaint, including conservation districts from across the nation, livestock and dairy associations, wheat growers, agricultural associations, multiple-use organizations, and private landowners.

Reasons for the lawsuit include:

■ *Lack of scientific basis supporting the need and development of the Plan. Scientific data is flawed.* The Plan is based on 19% of the nation's rivers and stream miles that have been assessed. Of the 19% assessed, 36% are deemed impaired; 51% of the 19% assessed were based on water-quality data, while 49% were based on evaluation with no water-quality data.

■ *Clear violation of federal laws requiring adequate public notice, analysis of impacts and intergovernmental coordination.* The Plan was never published for public comment and input. It never received congressional oversight or approval, yet it expands the authorities provided in the CWA. EPA and USDA officials have told challenging authorities they are not required to go though the National Environmental Policy Act (NEPA).

■ *The negative effect to local conservation districts' natural resource programs and efforts, the threat to the stability of the agriculture industry, and the potential cost to state and local governments* (as detailed in the described actions). The Plan does not address or consider existing programs and projects being implemented to reach the clean-water goals set in the CWA.

Other entities affected

There is hardly a state or local government, rural or urban area, school district, private organization, small business, or individual that will not be affected by the Plan. It covers every aspect of life in the United States, from the beaches to the mountains to the deserts.

Virtues of the Plan are being touted in our schools, but mostly it is being quietly enacted without the knowledge of America's citizens. They will only know about the Plan when they are locked out of their favorite fishing hole.

Most farmers and ranchers will know when a government official knocks on their door and says, "I'm here to help you."

Get involved; take action

Be informed. Check out the Plan on the Web at *www.cleanwater.gov* and the lawsuit at *www.conservewy.com*.

Find out if you live in an impaired watershed.

Contact your congressmen and legislators. They may not be aware of the CWAP or its effects on their districts.

Talk to your neighbors; get the word out.

Participate with your industry groups. State associations of conservation districts, land-grant universities and Extension services are willing to help with nonpoint-source-pollution questions.

Read "Lessons From the Watershed," which was published in the November 1999 *Angus Journal*.

"We could have done so much more to benefit water quality if we weren't using our resources to fight the Plan," says Frank. "The Plan has severe ramifications, which have to be addressed immediately." AJ