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DON'T DIG A WATERY GRAVE: STAY CURRENT ON THE LATEST WATER REGULATIONS AND AVAILABLE FUNDING

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The construction and rehabilitation of our nation's infrastructure has come to the fore with the advent of both climate change and the transformation of our energy production. As water shortages continue to move eastward from the western states and new water quality standards are promulgated to address previously unregulated pollutants, the handling of water will ultimately require as much, if not more, attention from corporate counsel than the current focus on fossil fuel. To anticipate this potential sea change, counsel should be aware of the evolution of governmental regulation of the use and handling of water, as well as monetary incentives to achieve compliance with the emerging laws.

To provide a brief history, in 1972, the [Clean Water Act](#) was amended to regulate direct discharges from industrial facilities and publicly owned treatment works ([POTW](#)), and later expanded to cover indirect discharges (e.g., runoff of stormwater) from agriculture and land development. Although the 1972 laws created a discharge permit system ([NPDES](#)) and initial funding for POTW construction, it wasn't until the enactment of the [Water Quality Act of 1987](#) that EPA received annual funding to award to states who set up [revolving grant and loan funds](#) to address problems with wastewater, drinking water and stormwater systems within each of their states.

Although the amounts varied with the changes in the executive office and congressional makeup, these funds were normally matched by the states through general obligation and/or revenue bonds and derived from the loan repayments and interest earnings to ensure that the funds would continue to be available to achieve their mission year after year. One such example is the [Pennsylvania Infrastructure Investment Authority \(PENNVEST\)](#), which awards grants and loans for wastewater, drinking water and stormwater projects, including brownfields, acid mine drainage and nutrient trading. Similar programs exist in each of the 50 states.

The enactment of the [American Recovery and Reinvestment Act of 2009 \(ARRA\)](#) provided additional stimulus funds, designed to create jobs, and required that 20 percent of the funds be disbursed for "green infrastructure" projects. EPA received \$4 billion of stimulus money, to encourage the full recycling of wastewater and stormwater to reduce energy costs, augment future water supplies and minimize adverse impacts on water quality. Since there are [financial federal incentives](#) from both the U.S. Environmental Protection Agency ("EPA") and the Department of Housing and Urban Development ("HUD"), you should proceed with due diligence to determine if funding opportunities are available for your organization. If an appropriate match is identified, assist in the requisite applications for these funds.