



April 28, 2011

NACWA Discusses New Rules, Regulatory Reform with EPA Office of Water

NACWA organized a municipal sector association meeting with Jim Hanlon, Director of the Office of Wastewater Management in EPA's Office of Water (OW), and other OW staff to discuss a variety of clean water issues. Hanlon reiterated that EPA has slowed its work on a comprehensive sanitary sewer overflow (SSO) rule due to budget and resource issues. He re-emphasized his commitment, however, to holding a one-day, facilitated workshop with NACWA and other stakeholders on the SSO issue. The workshop would help EPA determine the issues that are of most importance to stakeholder groups and find points of consensus. NACWA's SSO Workgroup – which worked on a draft petition for an SSO rulemaking last year – believes that blending must be part of a new SSO rule proposal, and Hanlon agreed that blending would be part of the conversation at the workshop.

On nutrients, EPA provided an update on its efforts to develop a permit writer's guidance on nutrients. The focus of the guidance will be on how to conduct reasonable potential determinations and write permit limits for point sources when a state only has narrative nutrient criteria. EPA indicated that beyond the few states where EPA has permitting authority, this type of analysis and permit limit development for nutrients based on narrative criteria is not occurring. The Agency hopes to have a draft of the guidance completed in the next six months, but has not decided whether it will release the guidance as a draft for comment, or simply release the guidance as "interim" and seek feedback on an ongoing basis. NACWA expressed a strong preference for the former approach and indicated that it would like an opportunity to comment on the document as soon as possible. Also on nutrients, EPA confirmed that it has asked the National Academy of Sciences (NAS) to review the costs associated with the Agency's numeric nutrient criteria in Florida. EPA hopes the NAS review will be finished before the new criteria become effective early in 2012.

NACWA also discussed its *Money Matters*[™] campaign and the necessity of prioritizing regulations in this time of a struggling economy and reduced federal budget for water and wastewater infrastructure. NACWA stressed that EPA's plan for regulatory review under Executive Order 13563 is an important opportunity to examine the Clean Water Act rules and consider their affordability, science, and environmental benefits and their cumulative impacts on utilities. Hanlon noted that OW would likely put approximately ten rules or policies on the review list and that the scope of this review would include all existing and even prospective policies, including guidance documents and criteria, rather than being limited to actual finalized rules. Hanlon also noted that a number of comments raised the issue of looking at the 1997 combined sewer overflow financial capability guidance and that this was on table, as was looking at the need for a comprehensive SSO policy. Other issues discussed with EPA included an effort between OW and the enforcement office to

clarify support for green infrastructure approaches and potential work to detail how to draft permit provisions for clean water agencies that are accepting wastewater from the hydro-fracking process.

NACWA to Comment on EPA Environmental Justice Initiative, Seeks Input

EPA is currently working to develop a list of potential tools and recommendations for better integrating environmental justice (EJ) considerations into the permitting process and into permit conditions. Last summer, EPA launched Plan Environmental Justice 2014 — a roadmap to help EPA integrate EJ concerns into the Agency's programs, policies, and activities. NACWA provided [comments](#) to EPA on the Plan, highlighting the issue of affordability as a key element that has, to date, been missing from EPA's EJ programs. EPA's EJ efforts have been, in large part, focused on the disproportionate impact of environmental pollution on economically disadvantaged communities, but the Agency's regulatory mandates and the very real financial burdens they represent for those same disadvantaged populations are also important. NACWA stressed in its comments that EPA must also take into consideration the ability of these communities to continue to pay rising sewer bills that result from programs designed to meet EPA mandates. Since releasing its Plan EJ 2014, EPA has been working on several Plan-related efforts across the Agency focused on advancing EJ. One of those elements is the EJ Permitting Initiative, through which the Agency wants disproportionately burdened communities to have full and meaningful access to the permitting process in order to ensure that permits issued under EPA's authority address EJ issues to the greatest extent practicable. In addition to seeking comments on the draft implementation [plan](#) for the EJ Permitting Initiative, EPA is also asking for comment on a draft list of tools and recommendations. Included in the draft [list](#) are potential permit conditions, including enhanced monitoring and the availability of facility-specific data, and other provisions designed to address community concerns. In addition to comments on the implementation plan and the initial draft list of tools and recommendations, EPA is seeking examples of past permits/permit processes that examined issues relating to EJ. NACWA plans to provide comments on the EJ Permitting Initiative by May 6.

Budget Compromise; Cuts Clean Water Funding

The fiscal year (FY) 2011 budget was finalized after tense negotiations between Congress and the White House that avoided a federal government shut-down. The final budget agreement includes approximately \$39 billion in spending cuts from FY10 spending levels. Included in these cuts was a \$1.6 billion funding reduction for EPA, the majority of which (approximately 66%) were taken from the Clean and Safe Drinking Water Revolving Funds (SRFs). Following the announcement of the compromise, NACWA sent an Advocacy Alert detailing cuts to specific federal programs designed to improve water quality. NACWA also issued a press release stating that the cuts to the SRF are misguided and ignore the financial challenges facing states and municipalities in meeting a growing array of costly Clean Water Act (CWA) requirements. In its statement, NACWA called on Congress to restore the federal partnership that existed when the CWA was passed in 1972, and to reverse the trend of requiring local communities to shoulder the majority of the burden of improving the nation's water quality. Specifically, NACWA called on Congress and the Administration to work closely with the clean water community, non-governmental organizations (NGOs) and state regulators in developing a more flexible and cost-effective approach to CWA compliance in line with the Association's *Money Matters*™ campaign. NACWA also called on Congress to enact a dedicated, deficit-neutral and sustainable source of funding for the SRFs so that these programs are no longer subject to yearly discretionary budget fluctuations.

NACWA Moves to Join Legal Battle over Florida Nutrient Criteria

NACWA filed a [motion](#) in federal court in Florida to join the growing legal fight over EPA's recently developed numeric nutrient criteria for the state, and to support the Association's Florida member utilities in their challenge to the new nutrient regulations. NACWA's *Motion for Leave to Participate as Amicus Curiae*, filed April 7, outlines the important national perspective that the Association can bring to the case on behalf of the municipal clean water utility community and requests permission to participate in the litigation as a friend of the court, or *amicus*. The criteria, finalized by EPA in November 2010 for freshwater lakes, streams, and rivers in Florida, were developed using controversial scientific methods that NACWA believes are inappropriate. The Association will use its amicus participation in the case not only to support a challenge to the criteria already filed by NACWA members in Florida, but also to argue that a criteria development approach similar to that which was utilized by EPA in Florida should not be used in other parts of the country. Additionally, NACWA will be able to provide the court with a valuable national viewpoint on nutrient policy and science from the perspective of the clean water agency community. Briefing on summary judgment motions is expected to occur in June, and NACWA will file a brief at that time.

NACWA-led Farm Bill Coalition Focused on Policy Solutions

The coalition of Washington, DC-based water associations, conservation and sustainable agriculture organizations met and focused their discussions on policy solutions for controlling nutrient run-off from agricultural sources. The Coalition heard from Martha Noble, a policy analyst with the National Sustainable Agriculture Coalition, who provided coalition members with an in-depth presentation of how current conservation programs funded by the Farm Bill could be reformed to focus more effectively on nutrient controls. Noble's presentation examined conservation programs such as the Environmental Quality Incentives Program (EQIP), the Conservation Stewardship Program (CSP), and the various conservation easement programs and offered recommendations for making targeted yet critical reforms to these programs to address nutrients. Noble's remarks were followed by a robust discussion among participants designed to achieve consensus on a set of policy reforms to recommend to Congress for the 2012 Farm Bill debate. The coalition also approved a [factsheet](#) on nutrient pollution that will be distributed to Congress next week in follow-up to the [Coalition's letter](#) in February urging Members of Congress to strengthen the links between agricultural policies and water quality.

Please feel free to contact Thea Graybill, Government Affairs Assistant with any questions or concerns at tgraybill@nacwa.org.