



April 5, 2010

NACWA Participates in Capitol Hill Briefing on Green Infrastructure Legislation

NACWA took part in a March 17 briefing on Capitol Hill regarding green infrastructure legislation, expressing the Association's support for the *Green Infrastructure for Clean Water Act* (H.R. 4202). NACWA's comments at the briefing emphasized the important role green infrastructure can play in helping municipalities manage wet weather flows, improve water quality, and enhance community livability. NACWA also highlighted how H.R. 4202 will significantly help municipalities by including significant federal grant money to fund green projects, technical assistance to implement such projects, and the creation of a formal green infrastructure program at EPA to provide regulatory assistance to cities and clean water agencies that make innovative uses of green infrastructure. At the briefing, NACWA stressed the importance of municipalities receiving regulatory credit for their use of green infrastructure and the need for EPA to change its clean water enforcement approach to better encourage such solutions to wet weather issues.

NACWA worked closely with a number of other stakeholder organizations, including the Natural Resources Defense Council and American Rivers, to provide significant input as H.R. 4202 was drafted. The legislation was introduced in December and now has 26 co-sponsors. Efforts are also underway to introduce a companion bill in the Senate. The March 17 briefing was organized by Northeast-Midwest Institute and focused on H.R. 4202 as well another green infrastructure bill, the *Green Communities Act* (H.R. 2222), which NACWA also supports. Reps. Donna Edwards (D-Md.) and Allyson Schwartz (D-Pa.), the respective authors and original sponsors of the bills were also on-hand to encourage broader support for these bills. All bills are available at <http://www.thomas.gov/>.

NACWA Advocacy Continues as Congress Contemplates Next Steps on Climate

NACWA recently delivered to each member of the U.S. House of Representatives and the U.S. Senate a copy of its report, *Confronting Climate Change: An Early Analysis of Water and Wastewater Adaptation Costs*. The publication, developed jointly by NACWA and the Association of Metropolitan Water Agencies (AMWA), details the impacts climate change will have on wastewater and drinking water utilities and estimates that adaptation will cost an estimated \$448 - \$944 billion through 2050. The report helps make the case that water resources management must be a key component of the federal approach as Congress considers climate legislation.

Although Congress' recent focus has been on health care legislation, activity has also been ramping up in the climate change arena. President Obama recently met with key Senators to urge action on a comprehensive climate change bill that has the potential to garner bipartisan support. Senators John F. Kerry (D-Mass.), Lindsey Graham (R-S.C.), and Joe Lieberman (I-Conn.) attended the meeting and are continuing their work to draft legislation. Following the Supreme Court decision of *Massachusetts v. EPA* 549 U.S. 497 — in which the Court ruled greenhouse gases are air pollutants subject to EPA's Clean Air Act authority — the Agency has continued to state its intention to regulate the larger emissions sources. This has met with significant bipartisan resistance on Capitol Hill with Senators John Rockefeller (D-W.Va.) and Lisa Murkowski (R-Alaska) seeking to advance bills of their own, and amendments to legislation aimed at preventing EPA from moving forward with such a Clean Air Act rulemaking. NACWA will continue to closely monitor the progress of climate change legislation and ensure that the clean water community's voice is heard.

NACWA/WEF Group Discusses Problems of Flushed Non-Dispersible Products

In response to concerns expressed by NACWA members regarding “flushable” wipes that can cause clogging at pumps and treatment plants, the Association partnered with the Water Environment Federation (WEF) to create a working group to further examine the issue and to review “flushability protocols” developed by the nonwoven fabrics industry. The working group held its first conference call and decided to broaden the focus of the group to other products that are non-dispersible but are commonly flushed, creating problems for the sewer system. The working group decided to collect data from utilities to document the damages and costs associated with non-dispersible flushed products, which will be useful in educating the public and the manufacturers and marketers of these products. It will also continue its review of a [guidance document](#) published by INDA, the U.S.-based association of the nonwoven fabrics industry, as well as [a document](#) developed by the Procter & Gamble Company that was reviewed by a panel of independent experts selected by the Water Environment Research Foundation (WERF). INDA has welcomed suggestions from NACWA on how the guidance document could be improved. The working group also discussed legislation proposed in California that would restrict the types of products that could be labeled as “flushable.”

A panel presentation at the NACWA's [2010 Pretreatment & Pollution Prevention Workshop](#) (see related story) will focus on this topic and will include Rory Holmes, the President of INDA. The working group will continue to discuss the issue and make recommendations for any future advocacy work by NACWA.

NACWA Builds Momentum in Congress for Changes to EPA Approach on Affordability

NACWA recently met with the offices of Ohio Senators George Voinovich (R) and Sherrod Brown (D) and received their strong support for legislative language in the FY 2011 Interior and Environment Appropriations bill that would require the Environmental Protection Agency (EPA) to update their 1997 affordability guidance document *Combined Sewer Overflow — Guidance for Financial Capability Assessment and Schedule Development*. This effort builds off of Voinovich's and Brown's introduction earlier this Congress of *The Clean Water Affordability Act* (S.854). This legislation, in turn, ultimately formed the basis for the inclusion of a key provision requiring EPA to review and consider revisions to its outdated 1997 guidance in the subsequently introduced *Water Infrastructure Financing Act* (S. 1005) — the Senate's State Revolving Loan Fund (SRF) reauthorization bill. S.1005, however, appears stuck in the Senate with little chance of movement in the near future — a situation that prompted NACWA to pursue the FY 2011 appropriations rider approach.

In addition to receiving the support of Sens. Voinovich and Brown on this effort, NACWA has also met with staff for the Senate Environment and Public Works Committee and Representative Jim Moran, Chairman of the House Interior and EPA Appropriations Subcommittee, to garner their support for the effort. These legislative efforts constitute just one part of a broader advocacy approach to address affordability concerns facing utilities across the nation. NACWA will continue to have regular meetings with staff at EPA concerning regulatory and enforcement-related fixes to their affordability approach and is in the early phases of developing and rolling out a multi-year public outreach campaign called “Money Matters”. Through this campaign NACWA will seek to raise public awareness of the fiscal impacts municipalities and clean water agencies are experiencing due to the lack of a rational, flexible and innovative approach to Clean Water Act compliance and management needs.

NACWA Sends Letter to EPA Regarding 2010-2013 National Enforcement Initiatives

NACWA forwarded [a letter](#) March 24 to EPA Assistant Administrator for Enforcement and Compliance Assurance (OECA) Cynthia Giles which responds to the Agency's announcement of National Enforcement Initiatives for fiscal years 2010-2013, expressing NACWA's support for the specific identification of affordability and green infrastructure issues in the municipal wet weather enforcement initiative but also indicating the Association's concern that the EPA document does not clearly identify how these concepts will be incorporated. The enforcement initiatives, released by EPA in February, include a focus on municipal wet weather issues such as combined sewer overflows and sanitary sewer overflows but also discussed the importance of finding affordable solutions to these challenges, including the use of green infrastructure.

The March 24 letter notes that while identification of affordability issues is a step in the right direction, EPA still needs to explain how it plans to consider affordability within the context of the municipal wet weather enforcement initiative. In particular, the letter cautions EPA against continued reliance on its outdated 1997 affordability guidance document (see related story) and instead pushes for a more holistic approach to affordability that looks at municipal water infrastructure investments through a broader lens, taking into account all of a community's financial obligations.

The NACWA letter also reiterates the Association's longstanding position for the use of green infrastructure as a solution to municipal wet weather challenges and supports EPA's inclusion of green techniques in the new enforcement initiative. Additionally, NACWA encourages EPA to allow green infrastructure to be a larger part of municipal consent decrees for those cities that would like to use it and to provide greater regulatory credit for the use of green infrastructure, further incentivizing communities to take advantage of its full spectrum of environmental, economic, and social benefits.

The letter requests a meeting with Assistant Administrator Giles and her staff to further discuss the municipal wet weather enforcement initiative and how affordability and green infrastructure will be incorporated.

NACWA Submits Brief Supporting Member Agency in Permit Appeal over WET Limits

NACWA submitted [a brief](#) to EPA's Environmental Appeals Board (EAB) supporting member agency the San Jacinto River Authority (SJRA) in Texas in an appeal of a federalized National Pollutant Discharge Elimination System (NPDES) permit containing whole effluent toxicity (WET) limits which were not required in an earlier state-issued permit. NACWA's brief, supported through the Association's Targeted Action Fund (TAF), states that the EPA takeover of the permit previously issued by the Texas Commission on Environmental Quality (TCEQ) and the inclusion of WET limits is both legally erroneous and inconsistent with the basic structure of the Clean Water Act (CWA), warranting review of the permit by the EAB.

The NACWA brief challenges EPA's action in the SJRA permit on two main legal points. First, NACWA contends that EPA illegally changed its position on TCEQ's wet implementation procedures, at first approving them and then later disapproving them and requiring new WET limits be placed in the SJRA permit, without providing a rationale for the change as required by law. Second, NACWA argues that EPA improperly federalized the state NPDES permit and substituted its own interpretation of Texas' approved water quality standards in violation of the CWA. NACWA further argues that both of these legal errors by EPA are enough for EAB review, and that a review is necessary due to the far-reaching national implications the Agency's actions could have on other CWA programs around the country. NACWA also believes this case could impact the nature of the relationship between EPA and the states under the NPDES program.

This case started in 2008 when EPA first federalized SJRA's permit and included WET limits. SJRA appealed to the EAB and NACWA was poised to issue a brief in support of its member agency. However, EPA quickly withdrew the challenged permit, making the appeal moot. EPA then reissued the permit last year but did not remove the controversial WET limits. SJRA appealed the permit again and requested NACWA submit a supporting brief. Additional information on the case is available on NACWA's Litigation Tracking page.

NACWA Presses for Increased SRF Funding on Capitol Hill

As the fiscal year 2011 appropriations process kicks into gear, NACWA is working to build support for as much funding as possible for the Clean Water and Drinking Water State Revolving Funds. In support of this effort, NACWA contacted members of the Senate urging their support of a "Dear Colleague" letter asking for at least \$3.5 billion for the funds — as compared to the Administration's budget request of approximately \$3.3 billion. Working with the Office of Senator Jack Reed (D-R.I.), NACWA helped develop and circulate a "Dear Colleague" letter urging Senators Dianne Feinstein (D-Calif.) and Lamar Alexander (R-Tenn.), Chairwoman and Ranking Member respectively of the Interior Appropriations Subcommittee, to include at least \$3.5 billion for the SRFs given the clean water funding needs that exist throughout the nation. The letter, which was also supported by Senator Kit Bond (R-Mo.), was circulated in the Senate. NACWA will continue its efforts to build support for short-term SRF funding in the coming weeks as Congress returns from the spring recess while also seeking support for a long-term dedicated trust fund. Please also continue to contact your Senators to urge them to support the \$3.5 billion and contact Pat Sinicropi at psinicropi@nacwa.org with any relevant information you may have received from discussions with your Senators.

Please feel free to contact Thea Graybill with any questions or concerns:

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