



August 24, 2011

NACWA to Engage in Aggressive Fall Campaign on Clean Water Infrastructure Funding

With President Obama finalizing his recommended job creation package and many in D.C., including EPA, looking at ways to jump-start the economy, a great deal of attention is being focused on infrastructure funding to accomplish this objective. Clearly, the Nation is at a critical juncture in determining its economic agenda and, as such, now is the time to be bold in our demand for additional funding, whether in the form of a larger appropriation for the Clean Water State Revolving Fund (CWSRF), new stimulus funding like the *American Recovery and Reinvestment Act (ARRA)*, and continued consideration of a deficit-neutral clean water trust fund. Congress should not be seeking to cut the deficit on the backs of construction programs that put people to work but should be looking elsewhere to meet its deficit reduction targets.

In line with this campaign, NACWA is working to develop a white paper that positions the Association's pro-funding/pro-jobs agenda in the context of the ongoing economic downturn, the U.S. credit rating downgrade, and the stagnant unemployment picture. With the new "Super-Committee" of twelve Members of Congress now in place to develop a plan to cut the deficit and President Obama and Congress searching for programs that can spur job growth, NACWA will be seeking all avenues to advance its pro-funding agenda. NACWA will work closely with its partners in the Water Infrastructure Network (WIN), the national groups representing municipal interests, the NGO community, and, of course, its "Clean Water Exchange" network.

This is a pivotal time in our Nation's history and the clean water program is clearly in jeopardy. The clean water infrastructure needs only continue to expand while the price-tag to comply with costly federal regulations is on the rise. This campaign represents a refusal to allow the federal government to abdicate its responsibility as a full partner under the Clean Water Act (CWA). NACWA will be sending out its clean water funding white paper via an Exchange Alert to you and will be calling on your organization and members to weigh in with the Administration and their Members of Congress on this effort.

EPA Seeks More Time to Review NACWA's Reconsideration Request on SSI Rule

EPA [filed a request](#) Aug. 11 with a federal appeals court requesting an additional three weeks to review NACWA's administrative petition for reconsideration and stay of the Agency's final sewage sludge incinerator (SSI) air emissions rule, indicating that EPA continues to give serious consideration to the arguments presented by NACWA in the

petition. The EPA legal request, which NACWA did not oppose, asks the court to move the deadline for procedural motions in NACWA's parallel legal challenge to the final SSI rule from August 19 to September 9. As part of this agreement, EPA has committed to provide NACWA with a final response to the Association's administrative request for reconsideration and stay of the rule by the end of August.

If EPA does not grant NACWA's request for a stay of the rule, the Association will still have time to file a request for a judicial stay of the regulation by the new September 9 court deadline. EPA has also agreed to move forward with expedited briefing in the SSI litigation if the Agency decides not to reconsider the rule, which will help ensure that the legal case advances swiftly toward ultimate resolution.

Momentum Continues toward Comprehensive Sanitary Sewer Overflow Rule

NACWA's goal of obtaining a comprehensive sanitary sewer overflow (SSO) rule gathered additional momentum as key national, state and municipal officials gathered at the Association of State and Interstate Water Pollution Control Administrators' (ASIWPCA) 2011 Annual Meeting and 50th Anniversary Celebration, which included an informative panel on SSO issues. Dave Williams, NACWA President and Director of Wastewater for the East Bay Municipal Utility District in Oakland California was joined by EPA's Jim Hanlon, Director of the Office of Wastewater Management, and key officials from the State regulatory agencies in Oklahoma, Utah and North Carolina.

Williams discussed the need for a comprehensive SSO rule and the importance of EPA providing municipalities with certainty on SSO issues. Hanlon also re-emphasized both his personal and his Agency's commitment to advancing work toward such a rule and also recognized this need for certainty. There was also significant support from the State representatives on the panel, and a broader array of State representatives at the meeting, for EPA moving forward with an SSO rule. With some States already implementing their own SSO policies and others in the midst of developing SSO programs, it was clear that a consistent approach from EPA would be helpful to them with the caveat that such a rule recognize the work being done by these States. At EPA's request, NACWA is working with ASIWPCA and the other participants from EPA's July SSO Workshop to develop a consensus-based outline of the key elements for an SSO rule to be shared with EPA as a next step in this effort.

NACWA Weighs in with EPA on Need to Embrace Regulatory Prioritization Approach

NACWA sent [a letter](#) recently to EPA's Acting Assistant Administrator for Water, Nancy Stoner, and to the Assistant Administrator for the Office of Enforcement and Compliance Assurance (OECA), Cynthia Giles, seeking a meeting with them as soon as possible to discuss NACWA's *Money Matters*TM campaign and its recommended approach to regulatory prioritization under the CWA. NACWA's letter came in response to a July 28 letter that Stoner and Giles had sent to the U.S. Conference of Mayors which stated that:

"EPA recognizes that municipalities face numerous challenges in meeting their new water quality goals and that it is imperative to focus resources first on those projects that will have the greatest environmental benefit. We would like to work directly with you, your members and municipalities to find common ground on an approach that allows municipalities to evaluate all of their CWA related requirements and develop a comprehensive plan to meet those requirements."

NACWA's letter noted that it was greatly encouraged by this statement and pointed out that the [draft legislation](#) developed by the *Money Matters* Task Force with the input of key stakeholders could serve as the starting point for a serious discussion with EPA toward developing a viable process for a comprehensive planning process to address regulatory prioritization under the CWA.

NACWA learned in a subsequent meeting with Ellen Galinsky, senior advisor to Assistant Administrator for Water, Nancy Stoner, that the letter had received significant attention at EPA and that the Agency will be asking NACWA to meet with a broad array of Agency staff to discuss this proposal. Also, the American Public Works Association (APWA) and NACWA are taking the lead on coordinating a meeting of key municipal groups to begin the process of developing a more formal coalition to advance the *Money Matters* legislative proposal and raise awareness of the issue amongst all the groups' memberships. NACWA will also be meeting after Labor Day with key NGO groups to discuss the regulatory prioritization approach.

The Association will keep *Exchange* members updated on developments in the *Money Matters*TM campaign as they occur.

NACWA, Municipal Groups Meet with EPA to Discuss Top Regulatory Priorities

NACWA and other groups representing municipal interests held two meetings with key EPA officials and stakeholders to discuss priority clean water issues. NACWA organized a meeting between its municipal network with Jim Hanlon, Director of EPA's Office of Wastewater Management, and other EPA staff to discuss current regulatory issues that are being pursued by the Agency. A major topic of discussion was the July EPA workshop on sanitary sewer overflows (SSOs – see [Advocacy Alert AA 11-19](#) for more information). Next steps were discussed for both EPA and the stakeholder groups represented at the workshop. Hanlon reiterated EPA's commitment to moving forward with a comprehensive SSO rule, stating that he "personally would like to add clarity to these issues" and that the utility community "deserves answers" on how to proceed with the management of SSOs and peak wet weather flows. EPA is still preparing a summary of the workshop discussion and plans to release it soon. NACWA has begun [discussions with the other workshop participants](#), which EPA has encouraged, to develop further agreement on the issues involved with an SSO rule and to develop an outline of a path forward for a rule. After EPA releases its summary of the workshop, NACWA will work with EPA to determine the areas that the Agency believes are critical for the stakeholder groups' focus. Also, NACWA's President David Williams, Director of Wastewater for the East Bay Municipal Utility District, will participate in a panel with Jim Hanlon at the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) meeting where the SSO issue will be further explored.

EPA Provides Information on Stormwater Rule, Draft CSO Compliance Monitoring Guidance

EPA also provided information about its stormwater rule proposal, which is due by September 30 under a settlement agreement, but may ultimately be proposed somewhat later than the agreement under the settlement due to the complexity of the issues involved. EPA is still considering certain issues involved with the rule, including a reasonable time to allow implementation of the rule after it is finalized. EPA also announced that its new draft guidance document, [Draft CSO Post-Construction Compliance Monitoring Guidance](#) is available on its CSO [website](#) and comments will be accepted until September 30. EPA developed this guidance since some CSO programs are nearing completion and questions were being raised about appropriate monitoring after completion.

EPA, NACWA Discuss Need for Support of Agency Programs to Spur

Economy, Job Growth

EPA also reassured NACWA that the ongoing economic downturn and unemployment numbers were a key concern for the Agency's leadership and that the Office of Water had been asked to provide information to the Administration on the link between its programs and the economy. NACWA informed EPA that it would be pushing hard during the Fall months on behalf of increased funding for clean water infrastructure.

NACWA, State/Regional Groups Highlight Concerns Regarding Numeric Nutrient Criteria

NACWA appreciates that many of your state/regional organizations joined the Association on a [letter](#) that was sent to EPA Administrator Lisa Jackson regarding numeric nutrient criteria. The letter was signed by NACWA, the Water Environment Federation (WEF), and 25 state/regional organizations. It affirms the municipal clean water community's dedication to addressing nutrient-related impacts, while underscoring key concerns with EPA's current approach for developing numeric water quality criteria.

While other groups have raised similar concerns, NACWA believes that this letter demonstrates the unified voice of the municipal clean water community at a critical juncture in national nutrient policy. The clean water community continues to be the only major source of nutrients held accountable for its contributions in most parts of the country and has already invested billions of dollars of ratepayer money to address this critical water quality challenge. While clean water agencies are committed to doing their fair share, there must be greater certainty as to the water quality outcomes from the tens of billions of dollars in additional investment that may be needed nationwide. The letter notes that it is critical that EPA "enable the States to develop meaningful water quality goals...to help ensure that nutrient loading reductions are both cost-effective and sustainable and the investments municipalities make have a real and significant impact on water quality while maximizing overall environmental benefit." The letter also recommends that EPA "accept approaches that do not fit within its current approach mold for developing water quality criteria."

EPA's continued insistence that States develop independently applied numeric criteria for both nitrogen and phosphorus for all waters is hindering progress and the letter urges the Agency to embrace and support the many innovative approaches being explored by the States. While recent policy statements from EPA, including a March 16 memorandum outlining a nutrient control framework, suggest that States will have the lead on nutrient-related issues, the Agency has continued to insist that States must eventually develop numeric criteria for nitrogen and phosphorus for all waters. States have begun to explore the use of a "weight of evidence" approach to evaluate more than just the concentrations of nitrogen or phosphorus before determining if a water body is impaired. Nutrient control programs in the Chesapeake Bay and in the State of Kansas, for example, operate without numeric criteria values for nitrogen and phosphorus and the municipal community, along with a broad group of stakeholders from all industry sectors, as well as state regulators, are encouraging EPA to embrace these workable, alternative approaches.

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