



June 14, 2010

## **EPA Announces Consideration of an SSO Rule, NACWA Workgroup Continues Efforts**

EPA announced in a press release and pre-publication version of a *Federal Register* notice that the Agency is considering “whether to propose to modify the National Pollutant Discharge Elimination System (NPDES) regulations as they apply to municipal sanitary sewer collection systems and sanitary sewer overflows [SSOs].” EPA will consider whether to develop broad-based SSO regulations under the NPDES program, whether to require satellite collection systems to obtain a permit, and whether to adopt the December 2005 draft Peak Flows policy or a revised policy, and/or to address peak flows as part of a holistic and integrated SSO rulemaking. NACWA is also considering how this announcement affects the Association’s ongoing efforts to lay the groundwork for a petition to EPA requesting development of an SSO policy, as well as the Association’s positions on SSOs and blending.

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## **Meeting with DOJ to Encourage Feds to Pay Stormwater Fees**

NACWA and Member Agency, the District of Columbia Water & Sewer Authority (DC WASA), met with representatives from the Environmental & Natural Resources Division of the Department of Justice (DOJ). The meeting took place in follow up to an April 30 [letter](#) from NACWA to Attorney General Eric Holder asking that DOJ carefully consider a recent decision by the Government Accountability Office (GAO) and the General Services Administration (GSA). That decision asserted that federal facilities located in DC are exempt from paying impervious area charges to DC WASA, claiming such charges are an illegal tax on the federal government rather than an actual service fee. NACWA has consistently held the position that stormwater charges are clearly fees for service – no different than fees for water and sewer service.

At the meeting, DC WASA explained the rationale for its impervious surface-based stormwater management fee, which is necessary to fund its long-term control plan. NACWA urged DOJ to issue a statement making clear that all federal facilities must pay reasonable and appropriate stormwater management fees in accordance with Section 313 of the Clean Water Act. DOJ representatives indicated that a timely decision would be made on this issue which would consider the specific statutes applicable to the DC WASA matter. The decision is also anticipated to include a recitation of factors that could provide guidance in other jurisdictions throughout the country. The DC WASA bill will not be due until October of this year.

While the representatives from DOJ’s Environmental & Natural Resources Division were generally sympathetic to NACWA’s position, the Association must also meet with DOJ’s Tax Division. The Tax Division will also have input into the ultimate decision and may not be as sympathetic. The Association continues to encourage your utility members, who are encountering similar problems, to share them with the Association by contacting Thea Graybill, NACWA’s Government Affairs Assistant, at [tgraybill@nacwa.org](mailto:tgraybill@nacwa.org).

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## EPA's 2008 Clean Water Needs Survey Shows Massive and Growing Funding Need

EPA released its long-awaited *2008 Clean Watersheds Needs Survey Report*. The *Report* provides the most up-to-date national estimate of how much money municipal clean water agencies will need to meet the requirements of the Clean Water Act (CWA). The *Report* cites a staggering estimate of \$298.1 billion in unmet clean water needs — a 17% increase over the 2004 assessment. The estimate includes \$187 billion for wastewater treatment and collection systems, \$63 billion for combined sewer overflow corrections, and \$42.3 billion for stormwater management. The data in the *Report* were summarized from a comprehensive census survey of more than 34,000 wastewater facilities and water quality projects and represent capital needs for up to a 20-year period.

The estimates clearly signal the need for increased federal investment in water infrastructure through the annual appropriations process, a robust reauthorization of the State Revolving Fund (SRF) program, and the creation of a sustainable and dedicated clean water trust fund. Given the magnitude of these needs and the current financial strain facing many municipalities – the *Report* helps make the case that EPA should consider additional flexibility in making CWA affordability determinations and move toward a more integrated affordability assessment process. The *Report* is available on [EPA's website](#).

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## NACWA Comments on DC Municipal Stormwater Permit

NACWA submitted comments on the draft municipal separate stormwater sewer system (MS4) permit issued to the District of Columbia in April of 2010. In its comments, NACWA continued to stress the importance of EPA addressing affordability and financial capability issues in a holistic manner in such permits. The Association also urged EPA to provide support for the use of green infrastructure as a way to help control stormwater runoff. NACWA supported the Agency's requirements for new development or redevelopment that would ensure that a certain percentage of stormwater be retained on-site, provided that there are alternative options available due to site-specific constraints. The Association is concerned, however, that the overall scope and the broad reach of many of the permit requirements will place significant financial hardships on the District, without offering sufficient clarity as to the water quality improvements that would be achieved.

NACWA was pleased to see that the retrofit program requirement allows for a lower performance standard based on site-specific conditions, and for off-site mitigation or payment-in-lieu options to meet the runoff management goal. The Association believes, however, that EPA must revise the draft permit to allow a more gradual phasing-in of the retrofit and redevelopment requirements after more is known about their environmental and financial impacts. In line with the Association's long-standing position, NACWA stressed the importance of EPA removing any potential for numeric effluent limits for MS4 discharges from the permit because it would otherwise conflict with the requirements clearly expressed in Section 402(p) of the Clean Water Act. NACWA will keep you apprised of the progress on this issue as it develops.

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Please feel free to contact Thea Graybill, Government Affairs Assistant with any questions or concerns at [tgraybill@nacwa.org](mailto:tgraybill@nacwa.org).