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October 19, 2010

NACWA Member Agency Leaders Meet with EPA Deputy Administrator to Discuss Future Funding, *Money Matters* Campaign

Key members of NACWA's Executive Committee and leadership met recently with EPA's Deputy Administrator Bob Perciasepe and other key EPA officials to discuss several key funding and financial issues. Perciasepe was interested in discussing the appropriate ongoing level of federal funding for the Clean Water State Revolving Fund (CWSRF). Perciasepe noted that under the Clean Water Act (CWA) the federal government was required to provide funds for the construction of wastewater treatment plants and sought NACWA's input on what the appropriate federal percentage should be for overall national sewer-related investment. The discussion was wide-ranging and included the need for a better estimate of national wastewater-specific construction spending and a workable economic matrix to determine the appropriate mix of rate increases, debt burden, and federal contribution. Perciasepe noted that the Office of Management and Budget (OMB) was seeking an across-the-board cut of 11% to EPA's budget and said it would be critical to develop a strong recommendation on behalf of SRF funding. NACWA's members noted that the EPA-estimated clean water needs were great and growing, that EPA's share of this investment would only need to expand as local rate increases in urban centers become too large to be sustainable, and that the Agency should urge the White House to support a clean water trust fund to ensure a long-term funding source for the SRF.

Perciasepe also expressed significant interest in NACWA's *Money Matters* — Smarter Investment to Advance Clean Water campaign. Perciasepe's attention was caught by the bipartisan Congressional letter urging EPA to update its affordability approach and NACWA made it clear that if EPA did not act on a revised affordability approach soon, the next Congress would be poised to step into the vacuum in a manner that the Agency would likely cause the Agency significant concern. NACWA invited Perciasepe to the March 1-2 *Money Matters Summit* and Rally in Washington, DC, which the organization has begun to organize. NACWA also met earlier in the week with Assistant Administrator for Water Pete Silva and other key Office of Water staff as part of a broader municipal water sector meeting and provided them with information on the *Money Matters* campaign as well.

Further details on this *Summit* and the *Money Matters* effort will be made available soon on the [Money Matters campaign webpage](#).

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EPA Publishes Proposed Clean Air Act Standards for Sewage Sludge Incinerators

EPA published proposed [standards](#) under Section 129 of the Clean Air Act (CAA) for sewage sludge incinerators (SSIs). The new standards will require the vast majority of clean water agencies with existing SSIs to install additional pollution control devices at a capital cost of over \$200 million dollars and an annual increase in costs of approximately \$100 million, according to EPA. The proposed standards are based on a maximum achievable

control technology (MACT) level of performance. For mercury, however, EPA has gone a step further and has proposed a more stringent control level that goes 'beyond the MACT Floor' at an estimated cost of \$12 million dollars per ton of mercury removed. Based on its initial review, NACWA believes that EPA has vastly overestimated the contribution of mercury from SSIs.

In a [press release](#) issued in response to the proposal, NACWA noted that the proposed new source performance standards could effectively eliminate the construction of new SSIs, and the standards for existing SSIs could force many communities to abandon incineration as early as 2016. EPA asserts that some of the costs to upgrade existing units will be avoided since many public wastewater utilities will simply abandon incineration and send their sludge to a landfill instead. NACWA, however, believes that EPA's analysis has understated the true costs utilities will incur to enable them to send their sludge to a landfill and has largely overlooked the negative environmental impacts that could result from abandoning incineration in favor of using landfills.

NACWA has already requested a public hearing on the rule, which is scheduled for October 29 in Research Triangle Park, N.C., which will automatically result in an extension of the public comment period to November 29, 2010. NACWA is also working to draft a comprehensive set of legal and technical comments on the proposal and is convening a conference call with its incinerator members October 22 to discuss the rule further.

NACWA Moves Forward on Legislative Fix to Federal Stormwater Fee Issue

Now that the Government Accountability Office (GAO) has issued a limited decision on federal facility payment of stormwater fees to the D.C. government, NACWA quickly shifted focus to move forward on efforts to require federal payment of stormwater fees through national legislation. NACWA staff met with Senator Ben Cardin's (D-Md.) office to discuss next steps on getting Congress to act on this issue before they adjourn later this year. Senator Cardin, Chair of the Water & Wildlife Subcommittee of the Senate Environment & Public Works Committee (EPW), has sponsored legislation requiring the federal government to pay these fees (S. 3481) and has included similar language in legislation focused on cleaning up the Chesapeake Bay (S. 1816). Meanwhile, S. 1816 is now part of a larger package of bills focused on public lands and watershed restoration efforts in other parts of the country while S.3481 may be able to be moved as part of a broader omnibus budget package later this year. Both these pieces of legislation passed the Senate EPW Committee in June. Meanwhile in the House, NACWA worked with Congresswoman Eleanor Holmes Norton (D-D.C.) to introduce companion legislation (H.R. 5724) to S. 3481. NACWA will work with Senator Cardin, Rep. Norton, and other key Congressional offices to ensure passage of this language before the 112th Congress adjourns.

EPA Unveils SRF Sustainability Strategy and its FY 2011-2015 Priorities

EPA unveiled two documents recently, its [Clean Water and Drinking Water Infrastructure Sustainability Policy](#), which seeks to further link state revolving fund (SRF) project dollars to sustainable community planning, and its Fiscal Year [2011-2015 EPA Strategic Plan](#) described as a "blueprint for accomplishing [Agency] priorities for the next five years."

The SRF sustainability policy, which EPA discussed at NACWA's Hot Topics Breakfast at WEFTEC, while leaving decision-making for choosing priority SRF projects entirely to states, seeks a closer working relationship between EPA, states and municipalities "to encourage additional practices, including up-front planning, effective utility management, asset management, integrated water resource management, and energy management to build a 'pipeline' of sustainable projects eligible to receive federal SRF . . . funding." The policy also notes EPA's intent to develop "guidance for utilities describing how they should enhance system-wide planning processes including consideration of other community sustainability goals, life-cycle cost analyses, and alternatives, such as natural or 'green' systems." NACWA members were involved in providing input into the development of this policy, especially the inclusion of references to the work the Association did in conjunction with other key groups on effective utility management, and will also ensure its voice is heard in the development of the guidance

referenced in the policy.

Also, [EPA released its Fiscal Year 2011-2015 EPA Strategic Plan](#). This strategic plan doesn't differ significantly from its previous five-year plan but it is important to note the order of the five strategic priorities contained in the plan: 1) taking action on climate change and improving air quality; 2) protecting America's waters; 3) cleaning up communities and advancing sustainable development; 4) ensuring the safety of chemicals and preventing pollution; and 5) enforcing environmental laws.

EPA Releases VSAT 5.0 and Water Health & Economic Analysis Tool (WHEAT)

The *Vulnerability Self Assessment Tool* (VSAT) provides a comprehensive, intuitive system for water, wastewater, and combined utilities seeking to analyze their vulnerability to both intentional threats and natural disasters. Funded by EPA, and developed in 2002 by NACWA – in collaboration with PA Consulting Group and SCIENTECH, Inc. – VSAT has supported water and wastewater utility vulnerability assessments using a qualitative risk assessment methodology for nearly a decade.

Recently, EPA – in collaboration with water sector partners – updated VSAT to be consistent with other water sector risk assessment methodologies. The upgraded tool includes a new user-interface, an enhanced natural disaster threat assessment process, and a revised risk assessment approach. VSAT 5.0 software will provide the following benefits:

- An intuitive process with improved navigation and enhanced work tracking features;
- An improved analytical approach that will make consequence, vulnerability, and probability of occurrence assessments of threats more transparent; and,
- A natural disaster assessment process supported by historical information to enable likelihood determinations.

Also released at the same time was a new consequence analysis tool – the *Water Health & Economic Analysis Tool* (WHEAT). WHEAT is an intuitive desktop software tool that assists drinking water utility owners and operators in quantifying public health impacts, utility financial costs, and regional economic impacts of an accidental or adverse event. Currently, WHEAT generates consequence results based on two scenarios for drinking water utilities: 1) release of a hazardous gas and 2) loss of operating assets. There are future plans to develop similar wastewater utility modules. The release of VSAT and WHEAT provide drinking water, wastewater, and combined utilities of all sizes with the capability to assess, plan for, and better respond to man-made threats and natural disasters.

VSAT 5.0 is available for download, free of charge, through EPA's website at: <http://yosemite.epa.gov/ow/SReg.nsf/description/VSAT>

WHEAT is available for download, free of charge, through EPA's website at: <http://yosemite.epa.gov/ow/SReg.nsf/description/WHEAT>

For more information on either tool, contact John DeGour of EPA at degour.john@epa.gov.

Law Seminar to Address Key Affordability, Regulatory Issues

NACWA's 2010 [Developments in Clean Water Law Seminar](#) is just around the corner and promises an engaging program that will address the most current legal issues facing clean water utilities, including a detailed analysis of emerging affordability and regulatory challenges. The Seminar, scheduled for November 17-19 at the Inn at Loretto in Santa Fe, New Mexico, is the only legal education program of its kind designed specifically for clean water attorneys and utility managers. Affordability concerns will take center stage at this year's Seminar with two different panel presentations focusing on issues both within the context of recently negotiated consent decrees,

as well as from the perspective of utilities implementing existing consent decrees. The discussion will kick off with a panel featuring case studies from a number of NACWA member agencies that have recently completed consent decree negotiations, including lessons learned and advice on making effective affordability-based arguments. The conversation will then continue with a second panel of NACWA members already under consent decrees but continuing to struggle with affordability issues as they implement their existing decrees. The speakers on this panel will explore efforts by utilities – and the clean water community as a whole – to gain more legal and regulatory flexibility in prioritizing needed clean water investments.

Regulatory developments impacting wastewater and stormwater utilities will also receive substantial attention during the *Seminar*, including how emerging new regulations from EPA addressing nutrients, sanitary sewer collection systems, and stormwater could impact NACWA members. EPA is also considering changes to existing regulations governing stormwater management standards, the incineration of biosolids, and water quality standards, all of which could significantly affect the operations of clean water agencies. A panel of legal experts will discuss these potential changes and their implications on municipal utilities from both a legal and regulatory perspective. Other topics to be addressed include a review of the most important Clean Water Act legal cases of the past year, a discussion of regional clean water developments and their national implications, and an overview of current enforcement trends confronting wastewater and stormwater utilities.

CLE Credits Available – Hotel Registration Deadline is October 25

As in past years, Continuing Legal Education (CLE) credits will be available for attorneys attending the Seminar, including ethics credits. Additional information on those states offering CLE credit, registration and hotel information – as well as an updated *Seminar* agenda are available on NACWA's [website](#). Hotel reservations must be made by October 25 to receive the discounted conference rate. Don't miss this opportunity to join your clean water colleagues for an engaging and informative program. We hope to see you in Santa Fe!

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

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