



September 30, 2010

NACWA to Meet with Department of Justice Regarding Federal Stormwater Fees

NACWA is meeting with high-ranking officials at the U.S. Department of Justice (DOJ) this week to advocate the Association's position that stormwater and wastewater fees charged to federal government facilities, particular fees based on impervious surface area, qualify as reasonable service charges under the Clean Water Act and must be paid by federal facilities. The meeting comes in response to a letter sent by NACWA to the DOJ's Office of Legal Counsel presenting the Association's legal and policy arguments that impervious area charges and stormwater charges levied by municipal wastewater and stormwater agencies should be classified as fees for service and not as taxes — a finding that would result in federal facilities being required to pay these charges. The letter further requested that DOJ issue a legal opinion outlining how impervious area charges and other stormwater fee programs can be structured to ensure they are considered a fee and not a tax so that municipalities can be assured that federal facilities will pay their appropriate share. NACWA will use the meeting as a further opportunity to advance its members' interests and explain the national importance of this issue for clean water and stormwater utilities all across the country. The Association anticipates that DOJ will release a legal opinion regarding the matter shortly after the meeting and will report to your state/regional organizations on any developments.

Nutrient Summit Sheds Light on Potential National Path Forward

NACWA members gathered in Chicago for the Association's Nutrient Summit, September 16-17, to hear from key policymakers and stakeholders and engage in a dialogue aimed at making recommendations to EPA on a viable national path forward on nutrient issues. Key federal, state, municipal, legal and NGO representatives provided presentations that framed national issues and set the stage for a productive facilitated session. Ephraim King, Director of EPA's Office of Science and Technology, made it clear that the Agency viewed wastewater treatment utilities to be among the significant contributors to the nutrient problem and that the development of numeric nutrient criteria was the appropriate path forward to ensure accountability. King noted that "NACWA is absolutely part of the solution," adding that "NACWA is a problem-solver — not a problem creator." Other highlights included presentations from state environmental officials from Wisconsin and Kansas who discussed their approaches to addressing nutrient control from both point and nonpoint sources and offered some alternatives to the approach in Florida where EPA is driving the process.

The facilitated session took place over two days and focused on what NACWA should offer proactively to EPA on a more rational approach to addressing nutrient-related water quality impacts. Participants highlighted the need to establish causal linkages before imposing nutrient controls and the need to address nutrients on a site-specific basis with sound modeling being one of the key ways to accomplish this. Given the current challenges with establishing linkages between nutrients and in-stream impacts, there was also significant discussion of a technology-based "ceiling" where local water quality conditions indicate that point source nutrient reductions are needed. The need for states to set rigorous requirements for nonpoint sources was also at the front-and-center of the discussion.

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