



March 1, 2010

Recovery Act Deadline Passes Successfully: All CWSRF Funds Under Contract

On February 17, the *American Recovery and Reinvestment Act (ARRA)* marked its one year anniversary, which was also the deadline for each State and the District of Columbia to have the \$4 billion provided to the Clean Water State Revolving Fund (CWSRF) under contract. Over 1,860 agreements have been executed with over 81% of the projects under construction already and 100% of these funds under contract. This represents a significant success for the clean water community as states and localities overcame initial delays and challenges to have all funds committed by this week's deadline.

NACWA was integral in securing CWSRF funding in the ARRA, as well as ensuring that key provisions, such as the additional subsidization requirements and green reserve set-aside, were included in the Act. It appears that both of these initiatives will likely remain a part of the SRF program as they have been included in the Fiscal Year 2010 appropriations bill and the President's Fiscal Year 2011 budget request.

NACWA is in the process of developing a state-by-state electronic report that tracks the implementation of the ARRA's CWSRF funds. The report will provide key details such as the state's total CWSRF allocation, the types of projects funded, number of SRF recipients, size of the communities receiving funds, and percentage of subsidization given through low interest loans and principal forgiveness. The Association expects this report to be completed in March, once final data from EPA become available.

NACWA Meets with EPA Water Chief, Urges EPA Action on Blending

Representatives from NACWA Member Agencies and staff met February 18 with Assistant Administrator (AA) for Water Pete Silva to discuss the continuing issues surrounding peak flow blending and how blending should be addressed in Clean Water Act (CWA) permits. As the AA for Water continues to be briefed on the issue, the water office is moving closer to deciding what its next steps will be. Senior EPA staff at the meeting indicated that a series of options for proceeding on blending would be presented to AA Silva in the next 30-45 days. The decision on next steps, however, will ultimately be made by EPA Administrator Lisa Jackson, whose office has already expressed an interest in the issue. Although options will be discussed in the next month or so, NACWA anticipates the briefing for the Administrator and subsequent discussions could take more time given the long and complex history surrounding the blending issue.

The objective for this week's meeting was to demonstrate to EPA that there is significant confusion among the regions and states on how blending should be addressed in CWA permits and urge the Agency to clearly decide how it is going to address the issue. While EPA did not provide the specific options they may consider for moving forward, finalizing the 2005 proposed peak flows policy is clearly among those options. A consideration for EPA management will be whether the Agency should begin work on a broader sanitary sewer overflow (SSO) rule under which the blending issues could be included. No action — in other words not finalizing the policy and continuing with business as usual — continues to be another option, but this would likely not be the

recommendation that EPA staff would provide to its management based on discussions at the meeting. NACWA asked whether the White House's Office of Management and Budget (OMB) would again present a roadblock, as it did when the 2005 proposal was first released, if the Agency decides to finalize the 2005 proposed policy. EPA indicated that they may not need to go through OMB again to finalize the policy.

Significant Issues Identified for Resolution

NACWA noted during the meeting that there are significant unresolved issues regarding the proposal that would need to be addressed before it could be finalized. Chief among those issues is how to handle parallel treatment systems. NACWA Member Agency representatives provided their perspective on how parallel treatment systems, that achieve levels of treatment comparable to secondary treatment, are being objected to by EPA Region 7, citing the bypass regulations and seeking to require the agency to conduct a no feasible alternatives analysis. The Association highlighted the fact that EPA's current position — that blending is a bypass — is a significant and new interpretation of the Agency's bypass regulations. As recently as 2003, EPA indicated that it would not consider blending to be a bypass. The Agency's new position seems now to be based on their interpretation of a proposed policy that has yet to be finalized. NACWA and its members in attendance made it clear that EPA's actions have led to regions and states interpreting peak excess flow blending as a bypass, marking a significant change in policy that needs to be clearly articulated through a final policy document before it can be used in CWA permitting decisions.

NACWA will be following this very closely and will report on any new developments. The Association will not lend its support to moving forward with any policy on blending until unresolved issues are addressed and does not support EPA's current approach of implementing a draft policy. Should the Agency fail to explain its new interpretation in a clear and final policy statement, NACWA leaves all advocacy avenues open, including legal action, as it represents the interests of its members.

NACWA Board of Directors Provides Valuable Input on Chesapeake Bay Legislation

NACWA's Board of Directors held a conference call on February 12 to discuss the [Chesapeake Clean Water and Ecosystem Restoration Act of 2009 \(S. 1816\)](#) and the Association's position regarding the bill. If enacted, S. 1816 would significantly change the current Chesapeake Bay Program and dramatically expand both federal and state authorities to clean up the bay and restore it to ecological health. The legislation could have significant implications for other watershed restoration efforts and serve as a model for future watershed-based legislation. Much of the legislative proposal would codify elements of EPA's [Draft Strategy for Protecting and Restoring the Chesapeake Bay](#) released Nov. 9, 2009. The Board discussed the legislation's impacts on the wastewater treatment community and identified several items that, if modified, would provide further assurance that the legislation will indeed accomplish its objectives for controlling nonpoint sources of pollution. Among those items are revisions to the total maximum daily load (TMDL) requirements and a level of assurance that significant federal funding will indeed be available for implementation. The Board agreed to draft a letter reflecting NACWA's support for the legislation's overall approach and pointing out specific improvements we would like to see as the legislation progresses.

The legislation imposes certain requirements on the District of Columbia and the six states within the Chesapeake Bay watershed — Delaware, Maryland, New York, Pennsylvania, Virginia, and West Virginia — that must be met in order for them to continue receiving federal clean water funding. The goal is to reduce adverse impacts to the bay caused by nitrogen, phosphorus, and sediments — the main pollutants in the bay — by enforcing a watershed-wide TMDL that EPA must approve by Dec. 31, 2010. The six bay states and D.C. would have to develop and implement watershed improvement plans (WIPS) in order to ultimately meet final TMDL reduction loads by 2025. The WIPs must contain enforceable measures to control all sources of pollution in the bay including agricultural runoff, stormwater, air deposition, and septic systems. The bill would authorize grants for states to implement their WIPs and establish monitoring programs. States that fail to meet their TMDL reduction goals through their WIPs risk losing their clean water funding.

In addition, the legislation requires specific stormwater management measures for all new development, institutes a phosphate ban with some exceptions, and authorizes a review that could lead to additional consumer product restrictions if those products are determined to lead to nutrient impairments in the bay. The legislation also requires the EPA to establish a nutrient trading program for nitrogen and phosphorus. Senator Ben Cardin

(D-Md.) is the main sponsor of the legislation and expects to report out the bill in March in the Senate Environment and Public Works Committee. NACWA will be asking its Board of Directors to review a draft NACWA letter outlining its position vis-à-vis the legislation and will continue to work with Senator Cardin and his staff to further improve the legislation.

NACWA Policy Forum Features Ongoing Dialogue with State/Regional Groups

NACWA is pleased to announce that this year's 2010 National Environmental Policy Forum, April 18-21 at the L'Enfant Plaza Hotel in Washington, D.C., is being held in collaboration with state and regional organizations representing the clean water community. NACWA has asked a number of such groups to lend their names in support of the Policy Forum and is pleased to announce that the Association of Environmental Authorities of New Jersey; the New York Water Environment Association, and the Water Environment Association of Texas have already agreed to lend their names to the Policy Forum. NACWA expects additional state/regional organizations to add their names to the Policy Forum over the coming weeks, demonstrating the ability of the clean water community to speak with one voice on national advocacy priorities. NACWA will also be meeting with these state/regional organization leaders at the Policy Forum on April 19 to continue a dialogue it had with many of these representatives in Washington, D.C., late last year, which demonstrated a need to address key issues, such as nutrients, enforcement, and affordability concerns, in a more coordinated manner.

NACWA is pleased to announce that key speakers for the Policy Forum have already been confirmed, including EPA Deputy Administrator Robert Perciasepe, United States Senator Ben Cardin (D-Md.), and Representative Mike Simpson (R-Idaho) among others. NACWA of course encourages any Exchange readers to feel free to register for our conference on [NACWA's website](#).

For more information, contact:

Adam Krantz
Managing Director,
Government and Public Affairs
NACWA
akrantz@nacwa.org