



October 14, 2011

NACWA Evaluates Jobs Act, Seeks \$10 Billion in Direct Funding for Clean Water

Following President Obama's release of *The American Jobs Act* (AJA), NACWA conducted an [economic analysis](#) of the AJA, with a focus on the proposed infrastructure bank. This analysis made it clear that the bank, which would provide \$10 billion initially for eligible transportation, energy and water infrastructure projects, would be paid for primarily by removing the tax exempt status from certain municipal bond investments. Specifically, the AJA would bar wealthy investors from using tax-exempt bond interest and other tax exclusions, expenditures and deductions to reduce their income tax rates below 28%. Unfortunately, this approach would cause the capital costs of NACWA members that issue municipal bonds to increase, leading to reductions in infrastructure spending in excess of any marginal new funding that might be realized through the proposed infrastructure bank. The analysis also provided a brief discussion on the AJA's policy goal of increasing private investment in the infrastructure arena. Ultimately, the analysis concludes that NACWA public agency members are likely to be better off under current funding and tax policies – and through direct funding for clean water infrastructure programs via the clean water state revolving fund. Member comments received through [Advocacy Alert 11-21](#) also expressed similar concerns to the infrastructure bank proposal.

With this input in mind, NACWA continued its efforts on Capitol Hill to promote greater spending for clean water and wastewater infrastructure. NACWA, along with the Water Infrastructure Network (WIN), met with Representative Tim Bishop (D-N.Y.), Ranking Member of the House Subcommittee on Water Resources and the Environment, to discuss the need for a jobs package and the critical need to include \$10 billion for direct water infrastructure funding in the legislation. Representative Bishop has been a long-time friend of the water infrastructure community and offered to introduce an amendment to the AJA that designates \$10 billion to water should the bill come before the Transportation & Infrastructure Committee. NACWA will continue to meet with key Members of the House and Senate to ensure this proposal gains maximum support.

NACWA's *Money Matters* Task Force Applauds EPA's Recent Efforts on Prioritization, Continues to Advance Legislation

NACWA's *Money Matters* Task Force held a conference call to discuss recent developments from EPA on an effort to move forward with a new integrated permitting/regulatory prioritization approach. At the heart of this discussion was a

[September 20, 2011 letter](#) from EPA to the U.S. Conference of Mayors committing the Agency to explore integrated Clean Water Act permitting approaches. In line with previous discussions between NACWA and the Agency, letter states that “EPA will increase its efforts to work with you and other stakeholders to identify municipal leaders that are committed to developing and implementing timely and effective integrated plans that may serve as a model for the future,” adding that the Agency looks forward to discussing “opportunities for comprehensive plans that allow municipalities to address all of their Clean Water Act requirements with effective and affordable solutions.” NACWA has also learned that EPA will be forwarding a memo to its Regional Offices in the near future stating that it is pursuing this effort; however, the details of the substance of this memo are unclear at this time.

The *Money Matters* Task Force felt that the September 20 letter signaled an important willingness on the Agency's part to consider the type of compliance schedule prioritization and holistic affordability approaches that are at the heart of the *Money Matters™* campaign. At the same time, the Task Force agreed that EPA had not yet provided any specific objectives or hard deadlines for action – making it critical to continue with an aggressive push on behalf of our legislation. As such, NACWA will continue to pursue its goal of a bipartisan introduction in both the House and Senate before the end of the calendar year.

In a related development, at the request of EPA Assistant Administrator for Water, Nancy Stoner, several NACWA member agency leaders met with Stoner and other key EPA officials in Milwaukee on October 3 to begin a technical discussion on what an integrated permit would entail. NACWA is also continuing to add stakeholder groups in support of its regulatory prioritization campaign and is seeking a commitment from EPA to sign onto a statement of intent with key stakeholders, including NACWA, committing the Agency to swift and significant action on the integrated permitting/regulatory prioritization front.

SSI Legal Efforts Shift to High Gear, NACWA Files Request for Judicial Stay

NACWA submitted an [Emergency Motion for Judicial Stay](#) of EPA's final air emissions rule for sewage sludge incinerators (SSIs) on Sept. 9, marking an important step forward in the Association's advocacy efforts to push back against the rule. The filing comes after NACWA [recently learned](#) that EPA intends to deny the Association's request for an administrative reconsideration and stay of the new SSI air regulations. Given EPA's refusal to act, NACWA's motion for stay requests the federal court of appeals in Washington, D.C. to judicially place implementation of the rule on hold until such time as the court addresses the merits of NACWA's [underlying lawsuit](#) against EPA over the rule.

The NACWA motion outlines a number of compelling legal arguments against the rule, including the fact the EPA ignored Congress' intent by regulating SSIs under the wrong section of the Clean Air Act and developed the final emissions limits using faulty data. The motion also outlines the significant operational, financial, and environmental harm that clean water utilities using SSIs and their surrounding communities will face if the rule is not stayed. Additionally, the motion requests that the court conduct an expedited review of NACWA's request for a judicial stay and issue a ruling as soon as possible. Additional information on NACWA's legal SSI efforts is available on the [Litigation Tracking](#) page of the Association's website. We will keep the state/regional organizations updated on developments.

NACWA Meets with EPA Administrator's Top

Policy Advisors on *Money Matters*TM Campaign, Integrated Permitting

NACWA met with three of EPA Administrator Lisa Jackson's top political and policy advisors to discuss next steps for moving forward toward a viable approach to integrated CWA permitting and regulatory prioritization pursuant to the Association's *Money Matters*TM campaign. NACWA's discussion was led by George Hawkins, General Manager of DC Water and Chair of the Association's *Money Matters* Task Force. EPA was represented by Arvin Ganesan, Associate Administrator of the Office of Congressional and Intergovernmental Relations; Bicky Corman, Deputy Associate Administrator for the Office of Policy; and Sarah Hospodor-Pallone, Deputy Associate Administrator for the Office of Intergovernmental Relations.

The meeting exemplifies the type of high-level attention NACWA's effort is receiving and receptiveness to infusing some flexibility and viable compliance schedule prioritization into the CWA. The effort is also benefitting from the growing pressure on the Administration from several groups, including the U.S. Conference of Mayors and the Association of Clean Water Administrators (ACWA, formerly ASIWPCA), to help struggling cities and states with an ever-expanding and costly regulatory regime. George Hawkins provided an excellent example from his own utility, which is dealing with a sewer overflow consent decree, Chesapeake Bay nutrient control, and aging infrastructure that demands ramped up investment, among other issues. NACWA also shared its September 9 letter outlining its recommendations to EPA for immediate next steps on this effort.

The meeting ended with the promise from EPA to bring the issue directly and promptly to Administrator Lisa Jackson for a discussion on next steps and to get back to NACWA quickly. In addition Acting Assistant Administrator for Water Nancy Stoner had an initial informal discussion with several NACWA public agency members on what an integrated permit would look like during the Clean Water America Alliance's Urban Water Sustainability Leadership Summit in Milwaukee on October 3.

NACWA believes there is a unique opportunity available to make progress on this issue and will continue to pursue all legislative and regulatory avenues aggressively. In addition to the meeting with EPA, NACWA hosted a stakeholders meeting with key municipal, state, engineering, rural and other groups, with the majority of the groups expressing support for the effort, including the American Public Works Association, ACWA, the Water Environment Federation, the National League of Cities, and others.

NACWA Raises Concerns over EPA Recreational Criteria Efforts

NACWA wrote a letter to Ephraim King, Director of the Office of Science & Technology in EPA's Office of Water, expressing concerns over the Agency's current direction in its efforts to revise the national recommended criteria for recreational water quality. The September 14 letter raises some of the same concerns the Association raised in a letter earlier this year, but also provides feedback based on discussions at a June 2011 stakeholders' workshop during which EPA provided an initial outline of its plans to revise the criteria.

NACWA's primary concern, as outlined in the September 14 letter, involves the timing for the release of the final criteria recommendations and the planned implementation guidance. During the June stakeholder meeting, EPA staff indicated that the final criteria would be released before any implementation guidance was ready, perhaps even before draft implementation guidance had been released for public comment. NACWA's letter notes that this is "a major concern given the complexity of implementing these criteria and the added challenge of overlaying new criteria on existing programs based on the 1986

criteria.”

NACWA's letter also sought additional details on the Agency's current thinking on the derivation of the new criteria and how that thinking may have evolved since the June stakeholder meeting. Another major concern is EPA's process for conducting a peer review of its methodology. EPA has shared no information regarding the peer reviewers, the charge questions, or what materials were provided to the peer reviewers. NACWA asked EPA to post these materials on its website.

Preliminary Agenda Available for Law Seminar, Hotel Deadline is October 21

A [preliminary agenda](#) is now available for NACWA's 2011 Developments in Clean Water Law Seminar, outlining a number of cutting-edge clean water legal topics to be addressed during the conference. The Seminar, scheduled for November 16 -18 at the historic Francis Marion Hotel in Charleston, South Carolina, promises to deliver an exciting and informative program addressing the most important topics currently impacting municipal clean water attorneys and utility managers. Among the topics to be addressed include a panel examining emerging wet weather issues, a review of legal challenges related to nutrient and nonpoint source control, and a discussion on how clean water lawyers can communicate more effectively with a variety of audiences. There will also be an overview of the most important CWA cases of the past year, an examination of how clean water utilities can pursue reopeners in wet weather consent decrees, and a summary of critical developments in clean water law enforcement actions. The agenda will be updated in the coming weeks as speakers are confirmed. Additional information on the Seminar is available on NACWA's website. The hotel registration deadline is October 21, so make your plans to attend today!

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

