



April 15, 2010

Momentum Grows for Legislative Affordability Fix; Mayors' Report Provides Helpful Data

NACWA reached out to several key lawmakers to seek their support for including language in the fiscal year 2011 EPA appropriations bill to require the Agency to undertake an affordability/financial capability review process and update its outdated 1997 guidance document establishing its approach to wet weather affordability issues. NACWA met with staff for the Chairman of the Senate Appropriations Committee, Senator Inouye (D-Hawaii), as well as Senator Herb Kohl (D-Wisc.) and Congresswoman Marci Kaptur (D-Ohio) all of whom understood the fiscal challenges communities must deal with when confronting large wastewater treatment infrastructure projects and costly new regulatory requirements. Each of these meetings went well and NACWA staff believes these offices will provide assistance to this important part of NACWA's affordability advocacy effort.

As NACWA's affordability efforts proceed on the Hill as well as with EPA, these initiatives are also receiving vital assistance from the U.S. Conference of Mayors both from an advocacy and an information-development standpoint. The Mayors recently released and continue to distribute their report titled *Trends in Local Government Expenditures on Public Water and Wastewater Services and Infrastructure: Past, Present and Future*. NACWA encourages state/regional representatives to download the report by [clicking here](#), review it and share it or the [press release](#) that accompanied it as broadly as possible with local, state and federal appointed and elected officials. The report addresses key trends in public water and wastewater spending as well as financial needs and limitations in terms of continuing to provide these vital services. As the press release points out, some of the key findings from the report include:

- The cost of providing public water and wastewater services and infrastructure from 1956 to 2008 was \$1.6 trillion in nominal dollars and \$3.2 trillion in inflation adjusted 2008 dollars.
- Today, 60 cents on every dollar spent is for Operations and Maintenance and 40 cents goes to capital investment, reversing an historical trend of a majority of expenditures on capital investments.
- Local government devotes six tenths of one percent of gross domestic product (GDP) to this function each year, while the intended preeminent federal aid program – the State Revolving Fund (SRF) loan programs - provides a mere 2 thousandths of one percent of GDP annually. The SRF program fails to provide adequate financial assistance to cities.
- Cities are spending more dollars on water and wastewater each year, but the investment needs far outweigh local government's ability to keep up with an aging infrastructure — Americans will likely face increased service disruptions, increased water main breaks, and greater impacts on local economies and threats to public health.

Clearly, in the context of the current economic downturn, the growing capital project needs and regulatory compliance costs are coming just as municipalities are bumping up against affordability limits. This issue is critical for municipal officials and transcends geographic boundaries. As a member of the Mayors Urban Water Council, NACWA and its members will be working closely with the U.S. Conference of Mayors and the array of key stakeholder groups to continue to fully address these vital concerns.

EPA Reaffirms Current Stance on Blending in Letter to Illinois Discharger

In a March 26 letter to the Illinois Association of Wastewater Agencies (IAWA), EPA Assistant Administrator for Water Pete Silva outlines the Agency's current position on the permitting of peak wet weather flow diversions and parallel treatment units at clean water agencies. Citing EPA's bypass regulations at 40 CFR 122.41(m), the letter states that the Agency "considers diversion around the secondary treatment units to excess flow treatment units to be a bypass where the effluent from the excess flow treatment unit does not meet the minimum requirements for secondary treatment". Though EPA "commends those municipalities that have installed excess peak flow facilities", the letter indicates that such utilities would be required to complete a no feasible alternatives analysis to seek approval for discharges from those units as an anticipated bypass. EPA states that although the 2005 peak flows policy has not been finalized, "it remains a viable path forward for utilities to meet their obligations under the bypass regulation." In recent meetings with EPA, NACWA has underscored its view that the continued use of a non-final proposal to impose significant new requirements on utilities with major financial implications is not acceptable. EPA is currently considering a list of options for its next steps on the peak flows blending issue, and has indicated that moving in the direction of a broader sanitary sewer overflow policy or rulemaking effort, which would encompass blending, is among those options (see related story).

NACWA Comments on EPA's Revised, More Stringent Ammonia Criteria

NACWA submitted [comments](#) on EPA's December 30, 2009, proposed revisions to its water quality criteria for ammonia. Since EPA's first announcement in 2004 that it might revise its existing ammonia criteria, NACWA has raised concerns over the freshwater mussel toxicity data EPA planned to use to revise the criteria values. EPA has provided NACWA with several opportunities to interact with key staff over the past several years to gain a better understanding of the new scientific information the Agency was considering. Last summer, in a meeting with NACWA, EPA indicated that it had collected additional data confirming the sensitivity of freshwater mussels to ammonia and that it would rely less on the data with which NACWA had raised concerns. Though the December 2009 proposed revisions confirmed that EPA has addressed many of NACWA's previous comments, several issues remain.

NACWA's April 1, 2010, comments supported EPA's approach of using bifurcated criteria, with different levels of protection for those waters where mussels were present, but highlighted a list of issues with the data being used, including the use of invasive species toxicity information, and several implementation questions that remain unanswered. The top implementation issue for NACWA is the manner in which the 'mussels present' determination is made. Once the 'mussels present' determination is made, then the more stringent criteria must be met. Clean water agencies will have difficulty meeting the new, lower numbers and their efforts to comply will result in other operational impacts, making the details of this threshold determination and subsequent implementation of vital importance. Unfortunately, few details are provided in the criteria document. EPA only notes that it appears that many states in the continental U.S. have freshwater mussel fauna in at least some of their waters. Given the complexity of the tiered criteria and the potential impacts on clean water agencies, NACWA's comments stressed the need for detailed implementation guidance. EPA representatives have indicated that implementation guidance will be released with the final criteria, but NACWA believes that any implementation guidance must be released for public review and comment before the final criteria are released.

NACWA Outlines Impacts of Solid Waste Rule on Biosolids with Budget Office

NACWA staff met with officials from the White House's Office of Management and Budget (OMB) on April 2 to discuss an U.S. Environmental Protection Agency (EPA) proposed rule that is expected to define biosolids that are combusted as non-hazardous solid wastes. If finalized the definition, which is being developed to assist EPA in determining the appropriate Clean Air Act (CAA) regulatory regime for a list of incineration categories, will have an immediate impact on sewage sludge incinerators (SSIs) and may have broader impacts for other

biosolids management options.

NACWA has maintained consistent pressure on EPA over the past year in an effort to persuade the Agency that SSIs are more appropriately regulated under Section 112 of the CAA. Regulation under Section 112 provides EPA more flexibility in developing emission performance standards and allows the consideration of economic impacts. NACWA continues its efforts with EPA's air office, highlighting the Agency's historic treatment of SSIs under Section 112 – and specific directives from Congress to handle air emissions from publicly owned wastewater treatment facilities differently under the CAA.

The rule currently under review by OMB will not only impact SSIs (by imposing the more stringent CAA Section 129 performance standards for burning 'solid wastes'), but may have wider impacts on other management options. At the meeting with OMB, NACWA highlighted the importance of this issue to its members, outlining the major financial impacts of regulation under Section 129 and underscoring how the proposal could further limit the options available for managing biosolids. The rule defining solid waste must be completed by April 15 to enable the Agency to meet a court-ordered deadline. NACWA has already secured Targeted Action Funds to prepare comments on the rule and to continue its efforts with EPA's air office to seek a more reasonable approach to regulating SSIs.

Momentum Builds in Congress on Affordability, Jurisdiction and Watershed Issues

NACWA held several meetings recently with key Congressional staff to discuss affordability issues and gain support for including language in the Fiscal Year 2011 EPA Appropriations bill requiring the Agency to review and update its 1997 document, *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development*, with input from stakeholders. The Association is working with several members of the Ohio Congressional delegation, including Reps. Marci Kaptur (D), Steven LaTourette (R), Senator George Voinovich (R) and Senator Sherrod Brown (D) to urge the leadership of House and Senate Appropriations Committees to include the language. NACWA met with House and Senate Appropriations Committee staff to discuss the issue and with staff for the House Transportation and Infrastructure (T&I) Committee to gain the support from Rep. Jim Oberstar (D—Minn.), Chair of the T&I Committee, for this effort and received generally supportive feedback and advice to ensure the broadest possible support from both the appropriations and authorizing committee members.

During the recent meeting with T&I staff, NACWA discussed a number of additional issues including the status of the Clean Water Restoration Act, Clean Water Act (CWA) jurisdiction legislation that Chairman Oberstar intends to introduce the week of NACWA's *National Environmental Policy Forum* (April 18-21). The discussion centered on both the inclusion of the manmade waste treatment exemption, as well as clarification that groundwater would not be subject to the reach of a broadened definition of waters of the US. NACWA anticipates that both of these critical issues will be taken care of satisfactorily in the pending bill. The Association also discussed the need for a hearing on watershed approaches. As envisioned, the hearing – anticipated to take place this summer or fall – would include NACWA testimony highlighting its draft watershed bill and the growing importance of a more integrated approach to water quality management. T&I staff indicated that such a hearing would be timely and that they viewed it as inextricably tied to the corresponding need for a long-term sustainable funding mechanism to address our nation's watershed needs.

Key Interior Appropriations Subcommittee Chairman Backs Trust Fund Bill

Recently NACWA learned that Representative James Moran (D-Va.), the recently appointed Chair of the House Appropriations Committee's Interior and Environment Subcommittee, will sign on as a co-sponsor of *The Water Protection and Reinvestment Act* (H.R. 3202) — the wastewater and drinking water infrastructure trust fund bill. This development is significant because the Interior and Environment Subcommittee is responsible for providing annual funding for the EPA. Chairman Moran's support comes in response to NACWA meetings with the Representative on the trust fund and other issues, including affordability. H.R. 3202 now has 32 co-sponsors.

NACWA expects additional Members to be added as co-sponsors in the coming weeks as Congress returns from the Easter recess.

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