



May 6, 2010

State and Regional Groups Convene at NACWA's Policy Forum

On April 19, during NACWA's 2010 *National Environmental Policy Forum*, state and regional organizations representing municipal clean water agencies met at a meeting hosted by NACWA to continue a dialogue on national issues of mutual interest. More than a dozen groups were represented, including the Water Environment Association of Texas, Oregon Association of Clean Water Agencies (OACWA), the Missouri Public Utility Alliance (MPUA), and numerous others. Many of these representatives stayed on and joined NACWA for the three day *Policy Forum*. NACWA and state/regional organization leaders addressed significant issues, such as: nutrient control — with the Florida Water Environment Association providing its input on EPA efforts to develop nutrient criteria for Florida; community affordability challenges — with MPUA discussing its ever-increasing wet weather control costs, and pollution prevention efforts — with OACWA discussing its pharmaceutical take-back programs as well as state legislation to address pollution prevention of toxics. In order to speak with one voice on clean water priorities, please continue supporting NACWA's *Exchange* and if possible, provide us with updates on vital issues you face that are not currently being covered in the *Exchange*. We look forward to continuing a productive partnership to address the increasingly complex challenges in the clean water arena with your state/regional organization.

Chesapeake Bay Utility Leaders Discuss Key Bill with Senator Cardin

Several NACWA members located in the Chesapeake Bay watershed met recently with Senator Ben Cardin, Chair of the Water & Wildlife Subcommittee for the Senate Environment & Public Works Committee, and his staff to discuss legislation the senator is sponsoring to reauthorize the Chesapeake Bay program. Representatives from the Washington Suburban Sanitary Commission (WSSC), the City of Baltimore Department of Public Works, the D.C. Water and Sewer Authority (DCWASA), and the Jefferson County Sanitation District (JCSD) in West Virginia participated in the discussion. During the meeting, Senator Cardin outlined his plans for introducing the legislation and asked for NACWA's support. Specifically, he noted that under his proposal the current framework, within which the states lead the Chesapeake Bay restoration efforts with EPA as a partner, would remain and that he has no intention of circumventing the states' primary role, a major concern for NACWA members in the region. He also noted that the legislation is designed to expand the sectors that can be brought into a regulatory framework— notably stormwater and agriculture — so that Chesapeake Bay restoration gains can be accelerated. Additional requirements on the municipal wastewater treatment sector are not being sought.

NACWA discussed several issues of concern to its members and the Senator pledged to work with the Association to address them. Some of the issues raised by NACWA's members include total maximum daily load (TMDL) temporal units; proportionate and equitable distribution among pollution sectors for reduction controls; removing a state requirement to establish water quality criteria; and allowing all funding designated under the bill to be available for disadvantaged communities. The Senator noted that he intends for the bill to maintain robust trading provisions to enable trades to occur across state boundaries and between sectors. In addition, the Senator reiterated his commitment to maintain strong requirements for the agricultural sector in his legislation. He noted that the legislation is gaining broad support from diverse interests including some in the development community, municipal and state governments, and the environmental community. He added that while some agricultural interests are supporting the legislation, the Farm Bureau and many other agricultural organizations

are not. NACWA has not taken a position on whether to support the legislation. The Association's Board of Directors will likely take up this issue once language is available outlining how the legislation would address the issues NACWA's members have raised.

NACWA Files Brief with Supreme Court Seeking Review of Critical Biosolids Case

NACWA filed a brief recently with the U.S. Supreme Court urging review of a lower court ruling that prevents a number of Southern California clean water agencies from challenging a discriminatory local ban on the land application of biosolids in federal court. The friend of the court brief, filed in the case of *City of Los Angeles v. County of Kern*, highlights the important connections between biosolids management programs and interstate commerce and argues that such connections warrant protection under the Commerce Clause of the U.S. Constitution. NACWA filed its brief in support of a petition to the Supreme Court by NACWA member agencies the City of Los Angeles, the Orange County Sanitation District, and the Sanitation Districts of Los Angeles County to overturn a decision by the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit ruled in September 2009 that the agencies did not have the proper legal standing to bring a federal Commerce Clause claim against a local ordinance enacted by Kern County, Calif. to ban the land application of biosolids.

NACWA's brief challenges the Ninth Circuit's decision and argues that biosolids management programs, and in particular land application programs, have significant connections with interstate commerce. The brief discusses the many ways in which land application programs affect interstate commerce and also outlines the extensive negative financial and commercial impacts that land application bans could have on interstate trade. NACWA also argues in the brief that the Ninth Circuit's decision unfairly prevents clean water agencies from challenging discriminatory local land application bans in federal court. The brief argues that the clear impact of biosolids programs on interstate commerce and the negative effects of local land application bans on national biosolids management efforts is sufficient enough to justify Supreme Court review of the Ninth Circuit ruling. NACWA was joined on the brief by the Water Environment Federation, the North East Biosolids and Residuals Association, and the Northwest Biosolids Management Association.

Revisions to EPA's Greenhouse Gas Emissions Estimates for Wastewater Still Needed

NACWA submitted comments to the U.S. Environmental Protection Agency (EPA) this week regarding the Agency's *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2008*. The annual inventory presents estimates of greenhouse gas (GHG) emissions for various sectors, including wastewater treatment. The Inventory has historically only been used for information purposes, but was recently cited in EPA's proposed *Prevention of Significant Deterioration and Title V GHG Tailoring Rule* ("*Tailoring Rule*") as the methodology a facility must use to calculate whether the threshold for regulation of GHG emissions under the Clean Air Act is exceeded. Given the importance of this Tailoring Rule, which is expected to be finalized by the end of April, and other potential future uses of the *Inventory* in crafting EPA regulations, NACWA's comments urged EPA to revise its estimates for nitrous oxide emissions from publicly owned treatment works (POTWs) to more accurately reflect actual emissions from these facilities. The wastewater treatment category in the *Inventory* includes centralized municipal wastewater treatment, septic systems, and industrial wastewater treatment systems, and consistently ranks in the top ten sectors for emissions of methane and nitrous oxide.

In comments on previous versions of the *Inventory*, NACWA has presented the results of a literature review on nitrogen loading values to POTWs, which ultimately determines nitrous oxide emissions from POTWs. NACWA also verified these literature values with a survey of 48 POTWs throughout the United States. EPA noted in the draft *Inventory* that "the dataset previously provided by NACWA was reviewed to determine if it was representative of the larger population of centralized treatment plants for potential inclusion into the inventory." NACWA's comments disagreed with EPA's conclusion that the dataset was too limited, stating that the Association "believes that the literature – including EPA's own publications – provides sufficient information to allow changes to be made to the *Inventory* emissions calculations methods." NACWA's literature review and data should provide EPA with a strong argument to conduct its own study to develop more accurate nitrogen loading rates. The Association will ask EPA for a direct response to its comments regarding the nitrous oxide

emissions estimates and determine what additional work may be needed to ensure EPA revises the *Inventory's* GHG emissions estimation methods. NACWA encourages state groups to weigh in with similar concerns as this process progresses

Water Infrastructure Network Presses for SRF Considerations on Senate Floor

Members of the Water Infrastructure Network (WIN), including NACWA, met recently with majority staff from the Senate Environment & Public Works Committee (EPW) to develop a strategy to move the *Water Infrastructure Financing Act* (S.1005), which would reauthorize the Clean and Safe Drinking Water State Revolving Fund (SRF) loan programs, to the Senate floor. During the meeting a general consensus emerged to try to have the four main sponsors of the legislation – Senators Barbara Boxer (D-Calif.) and James Inhofe (R-Okla.), Chair and Ranking Member respectively of the Senate EPW Committee and Senators Ben Cardin (D-Md.) and Mike Crapo (R-Idaho), Chair and Ranking Member respectively of EPW's Subcommittee on Water & Wildlife circulate a letter to Senate leadership urging them to place the legislation on the calendar for action this year. NACWA and WIN will work to secure the letter and seek additional signatories to demonstrate the broad bi-partisan support that exists for enacting the legislation this year. As part of this effort, in the coming weeks NACWA and WIN will seek meetings with Senators Inhofe and Crapo to discuss this strategy and seek their support. The legislation has stalled in the Senate due to disagreements over SRF state distribution formula and Davis-Bacon prevailing wage provisions. Organizations that are part of this *Exchange* are urged to weigh in with their Senators to support floor time for this key legislation.

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