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June 29, 2010

Key Senators Seek EPA Affordability Guidance Update Based on NACWA Input

Ohio Senators George Voinovich (R) and Sherrod Brown (D) officially requested language in the Fiscal Year 2011 Interior, Environment & Related Agencies appropriations bill that would require the Environmental Protection Agency (EPA) to review and update its 1997 guidance document, *Combined Sewer Overflows — Guidance for Financial Capability and Assessment and Schedule Development*. The Senators made the request in a June 22 letter sent to Senators Dianne Feinstein (D-Calif.) and Lamar Alexander (R-Tenn.), the Chairman and Ranking Member respectively of the Interior, Environment & Related Agencies Subcommittee. NACWA has also been working with Congressmen Steven LaTourette (R-Ohio) and Tim Ryan (D-Ohio) to move a companion request in the House. In recent weeks, NACWA has built strong support for the request requiring the Agency to update its guidance in both chambers for attaching proposed language to Fiscal Year (FY) 2011 EPA appropriations legislation. The House is expected to begin consideration of FY11 appropriations bills in the coming weeks. NACWA will continue to keep state/regional groups informed as this legislation develops and would appreciate your agencies' support for advancing this legislation.

On a Related Note, *Money Matters* Affordability PR Campaign Takes Shape

NACWA's Communications & Public Relations (PR) Committee leaders met this week with the public affairs consulting firm that is providing strategic direction for the Association's *Money Matters* campaign on Clean Water Act affordability issues. The discussion clarified the key next steps to take place over the next several months to help bolster NACWA's legislative, regulatory and legal efforts to ensure a new, more flexible approach to EPA affordability determinations. These steps include three key actions: 1) creating and distributing a brief member survey to gather key information/case studies on affordability challenges being faced by the clean water community; 2) developing effective messages around the issue of affordability that can help engender support from a broad array of stakeholders; and, 3) drafting and printing an effective "leave-behind" document that incorporates the messaging and case-study information for use by NACWA and its members with key local/state/federal elected and appointed officials, as well as other stakeholder groups. The ultimate goal is to gather the needed information over the coming weeks and to finalize the leave-behind document in early September in order to ensure that this issue is raised in the context of the Congressional election cycle. This will help place municipal CWA affordability concerns as part of the election debate on economic issues and ensure that incoming Congressional members are immediately made aware of the issue as both a priority economic and environmental concern. NACWA will be engaging the PR Committee and its broader membership on this effort going forward. The Association will keep state/regional organizations informed as these efforts develop.

Utilities Express Support for Sanitary Sewer System Rule at First EPA Listening Session

NACWA attended the U.S. Environmental Protection Agency's (EPA) first scheduled listening session to gather stakeholder input on a possible sanitary sewer system rule. At the June 24 session in Seattle, Wash. the majority of utilities speaking were supportive of EPA's plans to tackle sanitary sewer issues and encouraged the Agency to pursue a comprehensive national rule. Municipal utilities from Washington, Oregon, and California participated in the listening session, with a number of utilities making public statements in response to EPA's June 1 [Federal Register notice](#). All of the speakers were united in their belief that a "zero overflow" standard for sanitary sewer overflows (SSOs) was inappropriate and unachievable, and encouraged EPA to explore other options.

Most utility representatives also believed that a comprehensive rule should address capacity, management, operations, and maintenance (CMOM) issues; notification and record-keeping issues; treatment of peak flows within the collection system and at the treatment plant; and, satellite collection systems. After completing the formal public statements, the listening session offered a question and answer session. As part of the Q & A session, Agency staff indicated that EPA was considering a variety of different options for controlling SSOs and were careful not to commit to any specific approach or outcome.

The Seattle listening session was attended by approximately 20 people. It is essential for the clean water community to ensure heightened participation at the upcoming listening sessions to demonstrate the importance of this EPA effort to public agencies and to ensure our voice is heard. EPA is planning four more listening sessions on sanitary sewer issues: June 28 in Atlanta, Ga., June 30 in Kansas City, Kan., July 13 in Washington, DC, and July 14 via a virtual listening session broadcast over the internet. NACWA has put together a series of [talking points](#), which were echoed by many of the presenters in Seattle, and which the Association encourages members planning to attend the remaining listening sessions to use as a basis for their statements. Additional information on EPA's SSO efforts and information on registering for future listening session can be found on EPA's [website](#).

NACWA Advances Clean Air Act Legal Arguments on Incineration with EPA Attorneys

NACWA briefed the lead EPA Office of General Counsel (OGC) attorney working on the Clean Air Act (CAA) Section 129 maximum achievable control technology (MACT) emissions standards for sewage sludge incinerators (SSIs) Thursday on the Association's legal arguments that SSIs are more appropriately regulated under Section 112 of the CAA. NACWA argued that the Clean Water Act (CWA) definition of a publicly owned treatment works (POTW) includes POTW-operated SSIs and highlighted that EPA has consistently determined that SSIs are more appropriately regulated under CAA Section 112. NACWA also noted that POTW-generated sludges are not 'from commercial or industrial establishments or the general public', a key applicability provision for Section 129 standards, but are in fact generated by the publicly owned wastewater authority. While EPA is not likely to change direction before the proposed rule stage, NACWA is asking that the Agency seek comment on these issues to ensure they remain as potential options at the final rule stage. The proposed MACT standards for SSIs are expected to be released in the next few weeks, although the rule package has not yet been sent to the White House Office of Management and Budget (OMB) for its review. NACWA will keep you informed of the progress on this issue as it develops.

NACWA Efforts on Stormwater Encourages Legislation Requiring Federal Payment of Fees

Senator Ben Cardin (D-Md.), Chairman of the Water and Wildlife Subcommittee, introduced legislation that seeks to require that the Federal government pay reasonable fees for clean water services provided by local utilities. The legislation (S. 3481) clarifies that fees charged for the control and abatement of water pollution, including stormwater management fees, shall not be considered a tax and therefore are required to be paid by the government as outlined in Section 313 of the Clean Water Act. The issue gained attention in April when the

General Services Administration (GSA) delivered a preliminary announcement that Federal facilities in the Washington, D.C. area would not pay a recently enacted stormwater fee as they deemed it a tax. Following this, NACWA polled its members and found similar occurrences throughout the nation. NACWA played a critical role in raising the issue and worked closely with Senator Cardin's office on drafting the legislation. NACWA is currently seeking the introduction of companion legislation in the House of Representatives. The Association urges you to weigh in with your Senators to support this bill.

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

