

# CLEAN WATER NEWS

Jodi Perras, Principal with NACWA Private Affiliate Perras & Associates, presented a Communications Workshop at the Association's 2005 Law Seminar in Santa Fe, N.M. offering strategies for successful public outreach.



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A Clear Commitment to America's Waters

December 2005 / January 2006

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## NACWA-Supported Clean Water Trust Fund Legislation Introduced in the House

Chairman John J. Duncan, Jr. (R-TN) of the House Water Resources and Environment Subcommittee introduced landmark legislation — *The Clean Water Trust Act of 2005* (H.R. 4560) — on December 16, 2005 in an effort to address America's growing infrastructure funding crisis. NACWA applauds the leadership of Chairman Duncan in introducing a bill providing approximately \$7.5 billion annually over five years to improve the nation's waters. The introduction of H.R. 4560 is a milestone in the funding effort led by the NACWA Clean Water Funding Task Force, whose ongoing work has been made possible by contributions from Association member utilities and affiliates. Chairman Duncan's bill builds on the NACWA/Water Infrastructure Network (WIN) vision for mov-

ing forward with federal clean water legislation and marks a great beginning in ensuring the continued improvement of the nation's water quality in the years to come.

The *Clean Water Trust Act* will help urban and rural communities protect public health and the environment by restoring the federal-state-local financial partnership necessary to achieve the goals of the Clean Water Act. The bill will also create a dedicated, deficit-neutral Clean Water Trust Fund, similar to those that successfully finance highways and airports to address the U.S. Environmental Protection Agency's (EPA's) estimated clean water funding gap of \$300-500 billion.

Annually, States will award the first \$1.5 billion from the trust fund to municipalities through state water pollution control revolving funds.



Rep. John Duncan, Jr. Rep. Duncan, Chairman of the House Subcommittee on Water Resources and the Environment noted in his press release announcing the introduction of the *Clean Water Trust Act of 2005* (H.R. 4560) that, "There is nothing as important and yet nothing as taken for granted as a safe, clean supply of water. We have to do more to protect and enhance our clean water and wastewater systems for the future."

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## EPA Releases Joint NACWA/NRDC Proposal on Key Water Quality Practice

The U.S. Environmental Protection Agency (EPA) publicly released the NACWA/Natural Resources Defense Council (NRDC) negotiated proposal on the issue of blending peak wet weather flows at a press conference December 19, 2005 (<http://cfpub.epa.gov/npdes/wetweather.cfm?program.id=0>). In releasing the NACWA and NRDC proposal, EPA's Assistant Administrator for Water, Benjamin Grumbles, stated his appreciation on behalf of NACWA and NRDC's hard work and noted the Agency's desire to move forward quickly to review the comments it receives and finalize the proposal. The proposed policy will be published in

the *Federal Register* with a 30-day comment period. Since the October 27, 2005 release of the negotiated proposal, NACWA and NRDC have conducted numerous briefings for key federal and state offices and officials. Successful briefings have been held for EPA's Assistant Administrator for Enforcement and Compliance Assurance (OECA) and OECA staff; EPA's General Counsel and legal staff; the Office of Management and Budget (OMB); Senate Environment and Public Works (EPW) Committee staff; all 10 EPA Regional

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## 2005 Law Seminar Fosters High-Level Talks on Legal, Policy Challenges

The 2005 *Developments in Clean Water Law: A Seminar for Public Agency Attorneys & Managers (Seminar)* was held November 9-11 at the Inn at Loretto, Santa Fe, NM. The Seminar provided attendees with an excellent opportunity to meet and discuss current legal, regulatory and policy issues.



^ The 2005 *Seminar* began with a dynamic overview of the Clean Water Act (CWA) provided by Erika Powers, Partner with NACWA Legal Affiliate Barnes & Thornburg. The overview was designed for new practitioners and those seeking a refresher on key statutory provisions. Ms. Powers covered key issues associated with the CWA's regulatory structure, and how limits, permitting, enforcement, and specific issues relevant to publicly owned treatment works (POTWs) are handled.

### Law Seminar Focuses on Satellite Systems

One of the most intriguing panels of the *Seminar* was the opening discussion, *Piercing the Satellite Veil: Collection System Permitting & Regulatory Issues*. Moderated by David W. Burchmore, Partner with NACWA Legal Affiliate Squire, Sanders & Dempsey L.L.P., the panelists explored how collection systems are being regulated across the country. Stephen Sweeney, Attorney, U.S. Environmental Protection Agency (EPA), noted that the Agency continues to explore options for expanding regulatory coverage of satellite collection systems. Elston H. Johnson, Water Section Manager, Field Operations Division, Office of Compliance and Enforcement, Texas Commission on Environmental Quality, discussed his State's program to offer collection systems a no-penalty compliance agreement (CA) governing their upgrades and activities. Bobbi Larson, Counsel to the California Association of Sanitation Agencies, with NACWA Legal Affiliate Somach, Simmons & Dunn, PC, discussed recent efforts by California municipalities to develop a collection system permitting program with a variety of defenses for unavoidable overflows.

### Panel Explores Innovative Legal Advocacy

A dynamic roundtable followed entitled *Creative Lawyering: Maximizing Success Via Innovative Litigation Strategies*. Moderated by James Colston, Legal and Regulatory Affairs Liaison, Orange County Sanitation District, Fountain Valley, Calif., the panel explored



^ Recognizing that communications is an essential part of any litigation strategy, the *Law Seminar* included a Communications Workshop presented by Jodi Perras, Principal, with NACWA Private Affiliate Perras & Associates. The Workshop provided attendees with an opportunity to analyze fact patterns, to work in small groups to hone their public outreach skills, and offered a robust question and answer session.

the tools they have employed to get results for their clean water agencies and clients. These include: declaratory judgment actions, mandamus, petitions for rulemaking, interventions, and even bringing citizen suits. The panelists also discussed the pitfalls and promise of these various options. Other roundtable participants were Terry J. Satterlee, Vice Chair, NACWA Legal Affairs Committee and General Counsel, Little Blue Valley Sewer District; James J. Dragna, Partner with NACWA Legal Affiliate Bingham McCutchen; and Laurie Horridge, General Counsel, Narragansett Bay Commission.

Other covered topics included use attainability analyses (UAAs), total maximum daily loads (TMDLs) and biosolids management. In-depth discussions were held on whole effluent toxicity (WET), the Safe Drinking Water Act (SDWA), and civil and criminal enforcement trends.

### Seminar Evaluations Show Meeting's Popularity

A preliminary review of *Seminar* evaluations reveals that all topics addressed were relevant and practical to the attendees. All *Seminar* presentations are available on NACWA's *Conference & Meetings* webpage (<http://www.nacwa.org/meetings/>). Information will be available soon on the location and dates of the 2006 *Seminar*. ♣

## Legal Briefs

**N**ACWA continues its strategic legal presence on behalf of the clean water community. These *Legal Briefs* detail relevant legal activity and new developments. Additional details on NACWA's cases can be found in the Legal section of NACWA's *Member Pipeline* at [www.nacwa.org](http://www.nacwa.org) by clicking on *Litigation Tracking*.



⤴ NACWA's legal advocacy is supported by the Association's Targeted Action Fund (TAF) and demonstrates the timely initiatives that this fund allows NACWA to undertake on behalf of its members.

### NACWA Backs Minnesota Members in Pre-TMDL Permitting Case

On December 5, NACWA filed an *amicus curiae* brief before the Minnesota Supreme Court supporting its Minnesota member agencies and the Minnesota Pollution Control Agency (MPCA). In *Cities of Annandale and Maple Lake (Cities) National Pollutant Discharge Elimination System (NPDES)/SDS Permit Issuance*, the Minnesota Court of Appeals held that MPCA improperly found that the *Cities'* new discharge would not cause or contribute to a violation of water quality standards in a CWA § 303(d) listed water because it deter-

mined that the new discharge would be effectively "offset" by decreased discharges from other entities in the waterbody. NACWA's brief supports MPCA's ability to exercise discretion in issuing permits to protect water quality and public health. The brief also highlights that the Court of Appeals' decision would effectively impose a moratorium on permitting in listed waterbodies where TMDLs are many years from completion. A decision in the case is expected in 2006.

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### NACWA Supports EPA's Effluent Guidelines Activities

NACWA filed a November 23 brief before the U.S. Court of Appeals for the Ninth Circuit defending EPA's effluent limitations guidelines (ELG) program in *Our Children's Earth Foundation v. EPA*. NACWA's brief noted that it is "undisputed that EPA has, in fact, undertaken each of the actions ... the Agency had a mandatory duty to perform." NACWA urges the court to affirm the district court's May 2005 Order, which found that EPA is implementing the ELG program in a manner consistent with the plain language of the Clean Water Act (CWA). Briefing in the case continues in December. A decision should be rendered by the Ninth Circuit in early 2006.

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### NACWA Wins Critical Nutrient Case

On November 3, NACWA received a favorable deci-



sion from the Circuit Court for the City of Richmond, Virginia in *Chesapeake Bay Foundation (CBF) v. Town of Onancock (Onancock)*. In the case, CBF contended that the National Pollutant Discharge Elimination System (NPDES) permit issued to *Onancock* by the Virginia Department of Environmental Quality (VDEQ) "failed to take account of a long standing problem of low dissolved oxygen in the tributaries of the Chesapeake Bay" because it did not contain numeric limits for nutrient discharges. In an April *amicus curiae* brief, NACWA and the Virginia Association of Municipal Wastewater Agencies (VAMWA) supported the permit, noting that it properly deferred the imposition of nutrient limits until the state completes revision of the relevant water

quality standards and other high-level planning for the Chesapeake Bay. Concurring with NACWA's arguments, the court upheld *Onancock's* permit, noting that the Bay's planning process is underway and will bring the segment in question into compliance with water quality standards on or by 2010. The court also supported Virginia's "scheduled" implementation of its nutrient TMDL, holding that numeric effluent limitations are only required *after* the scheduled TMDL goes into effect (2010). This decision is valuable to NACWA members in Virginia, and serves as helpful precedent for other agencies seeking "phased" TMDL implementation. ♦

## NACWA 2006 Winter Conference Deadlines Approaching

**N**ACWA's 2006 Winter Conference – *Improving Knowledge Management in Today's Utility* – will be held at the J.W. Marriott in Palm Desert, Calif., January 31 – February 3. The Association's Winter Conference has long served as a forum focusing on cutting-edge utility management issues, and this year's program will examine the optimal ways for today's clean water utility to create, capture, share and leverage the knowledge they need to excel. The Association has confirmed a slate of dynamic speakers and compelling panels – all addressing the critical topic of knowledge management.

### Key Deadlines Approaching – Make Your Plans Now!

With the busy holiday season in full swing, individuals planning to attend the Winter Conference are urged to register without delay. The deadline for advance registration for the Winter Conference is **Thursday, January 19, 2006**. Online registration and the conference agenda are now available on the Association's *Conferences & Meetings* webpage (<http://www.nacwa.org>). NACWA's 2006 Winter Conference will be preceded by the *NACWA/WERF Research Priorities Workshop*. If you plan to attend the *Workshop*, please arrive on Sunday, January 30 for this Monday, January 31 meeting being held from 12:00pm – 5:00pm. We look forward to seeing many of you in Palm Desert.



▲ **Dr. James Johnson, Jr.**, Dr. Johnson is the Distinguished Professor of Management at the University of North Carolina at Chapel Hill, N.C. and will provide a closing keynote address at the 2006 Winter Conference.

### Keynotes, Panels to Provide Insight on Knowledge Management

Demographic changes over the past decade are a harbinger of change for utilities' future workforces, workplace environments and service populations. Dr. James Johnson, Jr., the William Rand Kenan, Jr. Distinguished Professor of Management at the University of North Carolina at Chapel Hill, will provide a closing keynote address, *The Changing Tides of the Nation's Population & Demographics*, focusing on this looming crisis. Johnson will examine national trends that have been seen across the U.S. post-1990,

explore future population forecasts and discuss how to create and maintain competitive and sustainable business operations and communities in the current era of economic uncertainty and global insecurity. Johnson is an expert on national population and demographics and was recently selected by *Fast Company* magazine as one of the "brightest thinkers and doers in the new world of work". His research on these and related topics has been widely cited in a number of national media outlets, including the *New York Times*, *Los Angeles Times*, *Wall Street Journal*, *Newsweek*, *Time Magazine* and many more. Johnson is also a member of the faculty of the Water & Wastewater Leadership Center – a joint venture of NACWA, the Water Environment Federation (WEF), the Association of Metropolitan Water Agencies (AMWA), and the American Water Works Association (AWWA).

In today's ever-changing workforce it is imperative that utilities continue to improve knowledge management, passing critical information and effective management styles to future generations. NACWA has lined up several panels to support utilities in fully understanding and utilizing knowledge necessary to succeed now, and in the future. 💧

## Winter Conference Attendees to Receive Complimentary Publications

**N**ACWA's 2006 Winter Conference – *Improving Knowledge Management in Today's Utility* – will be held at the J.W. Marriott in Palm Desert, Calif. NACWA's 2006 Winter Conference will serve as the forum for the release of two new NACWA publications. Conference attendees will be the first to

receive these new publications (a \$150 value) complimentary with their registration. Slated for release are the Association's 2005 Financial Survey CD and its most recent management publication, *The Changing Workforce... Seizing the Opportunity*. 💧

## Clean Water Trust Fund

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Another \$4.5 billion a year from the trust fund then will be awarded in the form of High Priority Partnership Grants to municipalities, via 65%-35% federal-municipal cost share financing to projects that "address the most serious water pollution problems; are necessary to ensure compliance with the requirements of the [Clean Water Act]; or, benefit communities with the greatest need". The trust fund requires the EPA Administrator to develop suitable user fees to serve as the funding source for the legisla-

tion. This language may be replaced before final passage of the bill with specific user fees.

H.R. 4560 also includes annual allocations in the amounts of \$250 million for sewer overflow grants, \$20 million for watershed pilot projects, \$250 million for critical regional waters, \$295 million for research and technology, \$250 million for fisheries enhancement, \$100 million for state wetlands programs, \$50 million for small and rural technological assistance and \$5 million for a Center for Utility Management.

Supporters of the legislation include: The Associated

General Contractors of America, National Association of Towns and Townships, Rural Community Assistance Partnership, Ducks Unlimited, Western Coalition of Arid States, American Society of Civil Engineers, Theodore Roosevelt Conservation Partnership, American Council of Engineering Companies, Association of Equipment Manufacturers, Trout Unlimited, American Concrete Pressure Pipe Association, Design Build Institute of America, Construction Management Association of America,

American Supply Association, Plastics Pipe Institute, Underground Contractors Association, American Sportfishing Association, the International Association of Fish and Wildlife Agencies and NACWA.

The Association appreciates the strong leadership of Subcommittee Chairman Duncan in holding hearings on this subject in June of 2005 and in introducing this legislation. NACWA will seek to ensure broad bipartisan support in the House for H.R. 4560 in 2006. ♣

## NACWA Holds 2005 Pretreatment Workshop in Kansas City, Missouri

The long-awaited pretreatment streamlining rule promulgated in October by the U.S. Environmental Protection Agency (EPA) was the focal point of the 2005 National Pretreatment and Pollution Prevention Workshop held November 16-18 in Kansas City, Mo. More than 210 wastewater professionals and others attended the meeting to hear how the new regulation, more than 10 years in the making, will affect their existing pretreatment programs. Other compelling topics included discussions on the control of fats, oils, and grease; electronic data management; and the impacts of the emerging pollutants, including endocrine disrupting compounds (EDCs), as well as pharmaceuticals and personal care products (PPCPs).

The Workshop opened with a roundtable discussion among the leaders of NACWA's Pretreatment

and Hazardous Waste Committee and representatives from EPA's Office of Wastewater Management and Office of Science and Technology regarding the pretreatment program in general and the Agency's streamlining rule in particular. NACWA leaders stressed, among other things, that implementation of the rule, which took effect Nov. 14, does not represent a significant modification. However, it does provide for numerous revisions designed to reduce the burden both on publicly owned treatment works (POTWs) and industrial dischargers (<http://www.nacwa.org/private/regalerts/ra05-10.cfm>).

Jan Pickrel, the pretreatment team leader at EPA headquarters, provided a technical overview of the rule and highlighted significant changes from the earlier regulation. These include removing the requirement that categorical industrial users

(CIUs) sample for pollutants not present if they can show that the pollutant is not present in the wastestream or only at background levels; clarifying that best management practices (BMPs) developed by a clean water utility may serve as local limits; and providing flexibility for clean water facilities to review the need for slug control plans rather than barring slug discharges altogether.

The Workshop also featured sessions on information management and tools being used in Phoenix and Cincinnati to facilitate the transfer of data management from paper to electronic formats. John Watson, water quality supervisor for the City of Phoenix, said the city began a pilot project for its electronic data transfer of self-monitoring reports in 2004 and expects to have it fully running in 2006.

Among the benefits of electronic

environmental data transfers is a reduction in transcription errors, streamlined reporting, more efficient data analysis, and faster compliance assessment.

Other popular sessions at the Workshop included a morning panel focused on the issue of emerging contaminants, including PPCPs and, endocrine disrupting compounds (EDCs), and the extent to which they are a pretreatment issue. During an emerging pollutants session, representatives from a union and an environmental group debated with officials from the industrial laundries industry regarding the merits of banning the use of nonylphenol ethoxylates in detergents.

PowerPoint presentations from the Workshop are available on NACWA's Conferences & Meetings webpage (<http://www.nacwa.org/meetings/>). ♣

## EPA Releases Joint NACWA/NRDC Proposal on Key Water Quality Practice

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Water Division Directors; the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA); and other wastewater and environmental groups.

Language from EPA's preamble to the draft guidance reflects the joint leadership of NACWA and NRDC in securing the proposal of this key water quality policy. "The NRDC/NACWA recommended approach includes an interpretation of the bypass regulation that is significantly different from the November 2003 proposal... Today's draft policy invites comment on this interpretation, as well as the recommended guidance to implement the interpretation,

and reflects the approach of the NRDC/NACWA recommendation. Specifically, the NACWA/NRDC agreement provides EPA with a sound path forward on an issue that had become highly politicized and appeared to have reached an unfortunate impasse. The proposal: 1) provides much-needed national consistency on wet weather flow diversions; 2) offers significant additional environmental and water quality benefits; and 3) ensures necessary public involvement with, and municipal flexibility in making, peak wet weather flow management decisions.

The *Guidance* would benefit the nation's water quality by minimizing the reliance of clean water facilities on peak wet weather flow diversions as



▲ EPA's Assistant Administrator for Water, Benjamin Grumbles (second from left), is joined by Ken Kirk, NACWA's Executive Director (far left), Nancy Stoner, Director of NRDC's Clean Water Project (second from right), and NACWA's General Counsel, Alexandra Dunn (far right), during a press conference announcing the Agency's release of the joint NACWA/NRDC proposal on peak wet weather flow management.

a long-term wet weather management approach to the maximum extent feasible, taking into account the economic and real-world factors detailed in the *Guidance*. NACWA also believes that the *Guidance's* enhanced public notice provisions will

improve the understanding and knowledge of peak wet weather flow diversion practices at public utilities. NACWA is confident that comments received by the Agency will demonstrate broad support for EPA's swift finalization of the policy. 💧

## NACWA's Clean Water Careers: Your On-line Recruitment Resource

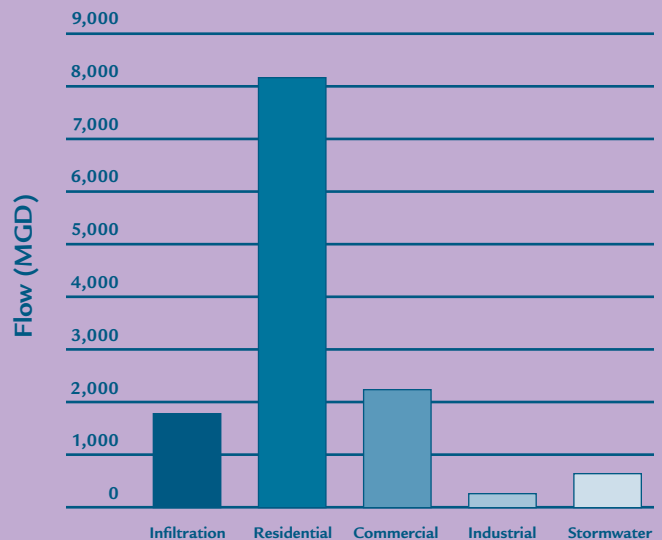
Public wastewater treatment agencies across the United States have discovered the value of the NACWA's Clean Water Careers employment resource. The Find-A-Job, Post-A-Job section features employment opportunities at wastewater agencies nationwide, and is continually one of NACWA's most-visited pages. Your agency can advertise employment openings for only \$150 per month with the certainty

that your ad targets water and wastewater community professionals. Visit NACWA's Clean Water Networking section (<http://www.nacwa.org/networking/>) to place your advertisement!

For more information or to place your ad on our Clean Water Careers website, please call Robin Davis, NACWA's Director of Marketing and Membership Development at 202/533-1802 or [rdavis@nacwa.org](mailto:rdavis@nacwa.org) to advertise today. 💧

## CleanWater Central™ Clips

Sources of Flow in Million Gallons Per Day



Source: 2005 CleanWater Central™ [www.cleanwatercentral.org](http://www.cleanwatercentral.org)