

CLEAN WATER NEWS

Kevin Shafer, Executive Director of the Milwaukee Metropolitan Sewerage District and NACWA Board Member, provided introductory remarks June 1 at the CSO Workshop sponsored by NACWA and the Wet Weather partnership. Shafer discussed Milwaukee's multi-year effort to reduce combined sewer overflows and sanitary sewer overflow discharges to Lake Michigan.



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A Clear Commitment to America's Waters

June 2006

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Congress Poised to Cut CWSRF; NACWA Highlights Need For Federal Re-commitment to Clean Water

The U.S. House of Representatives and the Senate Appropriations Committee voted to accept the Administration's proposed cut of another \$200 million over last year to the nation's largest federally-funded construction program for wastewater treatment works, sending the once robust Clean Water State Revolving Fund (CWSRF) to its lowest level in a decade. If the full Senate agrees to the \$688 million funding level in the U.S. Environmental Protection Agency's (EPA) fiscal year (FY) 2007 budget, it would be the second smallest allotment for the CWSRF since the loan program was authorized in the Clean Water Act Amendments of 1987.

Since FY 2004, the CWSRF allocation has been drained of 50 percent of its federal contribution, in spite of protests from NACWA members, mayors, state officials, and environmental activist organizations. Not only will a smaller amount of money be available for loan applicants, but many NACWA members will be ineligible to receive funding in some States as officials say they will be forced to limit their lending to communities with smaller populations. NACWA members also are seeing a decline in federal grants for wastewater infrastructure projects for their communities under EPA's State and Tribal Assistance Grant (STAG) program, and Congress is expected to permanently end funding for



⤴ Congress is poised to cut the Clean Water State Revolving Fund by \$200 million.

cooperative agreement grants and the wastewater operator training program.

NACWA, through the Clean Water Funding Task Force, the Clean Water America grassroots cyber campaign (www.cleanwateramerica.org), and the Water Infrastructure Network

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NACWA Closely Watching Evolution Of TMDL Program Post-“Daily” Load Case

The April 25 decision by the U.S. Court of Appeals for the District of Columbia (D.C.) Circuit — *Friends of the Earth (FOE) v. EPA* — that all total maximum daily loads (TMDLs) must specify daily pollutant loadings has spurred extensive discussion among the NACWA membership and federal EPA officials. In recent weeks,

NACWA has gathered more information from EPA on its plans and is focusing on its next steps.

Further Review by the Courts of the TM“D”L Decision Unlikely

The deadline for further court action passed June 9 without EPA or the District of Columbia Water and

Sewer Authority (DC WASA), the intervenor in the case and a NACWA member agency, seeking further legal review. EPA still has until July 24 to petition the U.S. Supreme Court for review. Although early signs are that neither EPA nor the U.S. Department of Justice (DOJ) are

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NACWA Urges Senate To Keep Wastewater Security Jurisdiction with EPA

The Senate Homeland Security and Governmental Affairs (HSGA) Committee successfully marked up in mid-June the bipartisan *Chemical Facility Anti-Terrorism Act* (S. 2145).

If the bill were to become law, it would shift jurisdiction over wastewater security from EPA to DHS and also switch Congressional jurisdiction of wastewater security legislation

from the Environment and Public Works (EPW) Committee to the HSGA Committee.

In related security news, the EPW Committee approved May 23 the *Wastewater Treatment Works Security Act of 2005* (S. 2781) by a vote of 10-8 along party lines. The bill would provide approximately \$200 million to utilities to perform vulnerability assessments and make priority security en-

hancements on a voluntary basis. NACWA provided input into the drafting process and sent letters to the Committee Members in support of the bill as well as EPA's and the EPW Committee's jurisdiction over wastewater security programs. The EPW Committee is discussing with the HSGA Committee its desire to retain jurisdiction over wastewater security laws and regulations. Because of the

objective of retaining jurisdiction for wastewater security issues in his Committee, EPW Chairman James Inhofe placed a hold on S. 2145.

NACWA continues to participate in ongoing discussions on chemical and wastewater security legislation to ensure passage of reasonable security legislation for NACWA members. 📌

NACWA Increases Membership By Eleven Organizations

NACWA's National Office is pleased to welcome eleven new members into the Association's ranks. These new members bring NACWA's total membership to 365; consisting of 283 Public Agency Members, 13 Public Affiliates (public utilities that convey, but do not treat wastewater), 51 Corporate Affiliates and 18 Legal Affiliates.

New Public Utility Members

- Roger S. Bailey, Utilities Director for the City of Glendale Utilities Department in Glendale, Ariz., will serve as representative for the Utility. Glendale has a service area population of 237,516.
- The City of Aurora Water Department in Aurora, Colo. will have Manager of Water Treatment, Timothy Smith serve as its representative.

Aurora has a service area population of 300,000 and was referred to NACWA by Dennis Porter, Utilities Director for the City of Henderson, Nev.

- Utility Division Manager, Chuck Hill, will be the representative for the County of Durham Engineering Department in Durham, N.C. Durham has a service area population of 18,158.
- Hallsdale Powell Utility District in Knoxville, Tenn., will be represented by Vice President and Chief Operations Officer, Darren Cardwell. Hallsdale Powell has a service area population of 50,000.

New Corporate Affiliates

- Gardnyr Michael Capital, Inc. in Mobile, Ala. will have Investor, Jack Boatman, serve as its representative.

- McCord & Company located in Alexandria, Va. will have Principal, Ann McCord, serve as the firm's representative.
- Eric Close, Chief Executive Officer for Redzone Robotics, will serve as the firm's representative. Redzone is based in Homestead, Pa.

New Legal Affiliates

- Meyer & Wyatt, PC located in Gary, Ind. will have President, James B. Meyer serve as the firm's representative.
- Stinson Morrison Hecker LLP in Kansas City, Mo. will have Partner, Parthenia Evans serve as its representative. Incoming NACWA President, and Director of Independence Water Pollution Control Department, Mo., Dick Champion, Jr., referred Morrison and Hecker for membership.

- D. Randall Benn, a Partner in the firm of LeBoeuf, Lamb, Greene & MacRae LLP will serve as the firm's representative. LeBoeuf is based in Washington, DC.

NACWA welcomes our newest members, and looks forward to continued growth and increased national prominence on Capitol Hill, at the U.S. Environmental Protection Agency and in the nation's courtrooms.

Refer a Colleague!

NACWA invites members to become involved in "growing" the Association. By referring a new member, a NACWA utility will receive a free registration to any of the Association's meetings and conferences in the coming year. Contact Robin Davis, Director of Marketing and Print Management (202/533-1802 or rdavis@nacwa.org), to learn more about this opportunity or to refer a colleague! 📌

NACWA Continues to Take Lead To Boost Advocacy, Education on Biosolids Issue

NACWA continues its work to ensure that publicly owned treatment works (POTWs) have the information and flexibility needed to make sound biosolids management decisions. Recent activity on the biosolids front reaffirms the leading role of POTWs in ensuring their biosolids are safe. NACWA and its member agencies must and will continue to provide the public accurate information about the benefits of biosolids management practices, including land application.

Ballot Measure Bans L.A.'s Land Application of Biosolids in Kern County, Shows Need for Continued Advocacy, Education

The City of Los Angeles, a NACWA member, faced a potentially precedent-setting setback as residents of Kern County passed Ballot Measure E, which effectively bans the land application of L.A.'s biosolids on "Green Acres," a city-owned farm in

Kern County. The Kern County vote underscores the need for continued advocacy on behalf of land application as a safe and sound biosolids management practice that must meet stringent and protective federal, state, and local regulations.

As the City of Los Angeles' Department of Public Works' press release (<http://www.nacwa.org/getfile.cfm?fn=2006-06-07cofla.pdf>) noted on this issue, L.A. has been land applying biosolids for the past 12 years with no negative impacts in Kern County.

In fact, the press release said, land application "has contributed to the economic development of Kern County by adding \$8 million to the local economy in jobs and taxes. Kern County residents work at the farm [which grows corn, wheat, alfalfa, and Sedan grass used to feed cattle]. As a result of Measure E, highly treated biosolids originating outside of Kern County will be banned, while dirtier, lower-quality biosolids from within the county will continue to be applied."



NACWA will be supporting L.A.'s efforts to find other options in addition to land application, including the possible use of injection wells designed for this purpose, and is ready to assist in potential legal action in the wake of the Kern County ban. NACWA's Biosolids Management & Legal Affairs Committees will discuss this issue in more detail at their next meetings at the 2006 Summer Conference, July 18-21, in Seattle (<http://www.nacwa.org/meetings/06summer/>).

WERF Report Shows Leadership of POTWs in Ensuring Safety of Biosolids Management Practices

On June 5, 2006, the Water Environment Research Foundation (WERF) published

a report entitled *Examination of Reactivation and Regrowth of Fecal Coliforms in Centrifuge Dewatered, Anaerobically Digested Sludges*, detailing results from the first phase of a research study that found elevated levels of fecal coliform bacteria in centrifuge cake samples at four of the seven studied facilities.

NACWA is working with WERF and the Water Environment Federation (WEF) to ensure POTWs follow-up and provide additional resources on the issue. As outlined in the study, several communities have already successfully implemented mitigation strategies when further pathogen reduction was determined to be necessary. Also of great importance is EPA's June 5 written response (http://www.nacwa.org/getfile.cfm?fn=2006-06-WERF_Reactiv.pdf) to the WERF report that stated that the pathogen requirements and operational standards in Subpart D of the Part 503 regulations continue to be considered "protective of public health." ♦

NACWA Seeks Assurances from EPA On Mixing Zones in Northwest

NACWA and representatives from the pulp and paper industry are urging EPA to publish an interpretive statement affirming its position that mixing zones are allowed under the Clean Water Act. The need for such a statement is particularly important at this time in the

Northwest where environmental activists are seeking a ban on mixing zones in Oregon. Benjamin Grumbles, the EPA Assistant Administrator for Water, reiterated the Agency's belief that the CWA provides for mixing zones, but said the decision of whether to allow them ultimately lies with the states. Environmental

activists have sought for years a nationwide ban on mixing zones, similar to one for the Great Lakes. Meanwhile, activist groups filed a notice of intent to sue EPA Region 10 in Seattle challenging the Agency's approval of Washington State's NPDES permit program. The activists argue that Washington's permit

program causes violations of the Endangered Species Act, partly because of toxic releases allowed in mixing zones. NACWA will continue to partner with its members in Washington and Oregon to help respond effectively to challenges seeking to eliminate mixing zones. ♦

Don't Miss NACWA's Upcoming Conferences!

NACWA Conferences offer the latest information on a range of clean water issues and provide attendees with unparalleled opportunities to network with colleagues from across the country. Join your clean water colleagues for the following Workshops, Seminars and Conferences:

2006 Conferences

Fall Board & Leadership Retreat
September 18-19, 2006
Madison Hotel
Washington, DC

2006 National Pretreatment & Pollution Prevention Workshop
October 4-6, 2006
Royal Sonesta Hotel New Orleans
New Orleans, Louisiana

Developments in Clean Water Law: A Seminar for Public Agency Attorneys & Managers
November 15-17, 2006
Sheraton Boston
Boston, Massachusetts

2007 Conferences

Winter Conference
January 30 - February 2, 2007
Renaissance Vinoy
St. Petersburg, Florida

National Clean Water Policy Forum
May 6-9, 2007
Renaissance Washington
Washington, District of Columbia

Summer Conference & 37th Annual Meeting
July 17-20, 2007
Renaissance Cleveland
Cleveland, Ohio

For the latest information on NACWA's Meetings and Conferences, visit our website at www.nacwa.org.

EPA To Exempt Water Transfers From NPDES Program as Court Reaches Opposite Conclusion

On June 7, the U.S. Environmental Protection Agency (EPA) released a much anticipated proposed rule to clarify that "water transfers" are not required to have a National Pollutant Discharge Elimination System (NPDES) permit under Clean Water Act (CWA) § 402. EPA's proposal emphasized that the water quality impacts of water transfers are better regulated primarily by the states in cooperation with the federal government. EPA noted that Congress did not intend for the Act to interfere with state regulation, and by requiring federal permits for the transfer of water, the CWA would unnecessarily involve EPA in this arena.

If finalized, EPA's proposal would codify the Agency's longstanding position, which had been challenged in the courts primarily in the cases of *South Florida Water Management District (SFWMD) v. Miccosukee Tribe of Indians (Miccosukee)*, decided by the U.S. Supreme Court in 2004, and *Catskill Mountains Chapter of Trout Unlimited, Inc. (Catskills) v. City of New York* decided on June 13 by the U.S. Court of Appeals for the Second Circuit. In conjunction with the New York City Department of Environmental Protection (NYCDEP), a NACWA member, and other municipal groups, NACWA filed *amicus curiae* briefs before the U.S. Supreme Court in *Miccosukee* and before the Second Circuit in *Catskills*. In both cases, NACWA's briefs and related submissions highlighted the administrative difficulty of adding thousands of sources to the already backlogged NPDES permit program, the importance of maintaining local government autonomy over water management and allocation decisions, and — in response to a question from the Second Circuit — the inability to essentially "waive" water quality standards for covered entities.

EPA's proposal would define a water transfer as an activity that conveys waters of the United States to another water of the U.S. without subjecting the water to "intervening industrial, municipal, or commercial use." EPA is careful to state that if a water transfer structure (a "point source") adds a pollutant to

the water when passing through the structure, then NPDES permits are required. EPA makes clear that "if water is withdrawn from waters of the U.S. for an intervening industrial, municipal or commercial use, the reintroduction of the intake water and associated pollutants is an 'addition' subject to NPDES permitting requirements."

Decision by Second Circuit Takes Issue With EPA's Water Transfer Rule

In a troubling development, however, the *Catskills* court ruled for the second time June 13 that NYCDEP is required to obtain an NPDES permit for its water transfer tunnel, which moves untreated natural drinking water between two waterbodies. Finding EPA's plans to issue a rulemaking exempting water transfers from the NPDES program unpersuasive, the *Catskills* court instead held that a permit is required because NYCDEP's point source tunnel "adds" pollutant (silt) to a navigable water of the U.S.

On June 27, NYCDEP filed a petition for rehearing and rehearing *en banc* of the June 13 ruling, asserting that the Second Circuit "ignored" EPA's "pending rulemaking process, in which EPA has proposed to clarify that mere transfers of water, without intervening industrial, municipal, or commercial use of such water, are not subject to the" NPDES program. NYCDEP's petition asserts that the Second Circuit "inappropriately substituted its judgment for that of EPA, the agency with authority to administer and interpret" the CWA. NYCDEP urges the court to withhold a final decision until after the EPA rulemaking is complete.

NACWA's next steps on the water transfer issue will follow two paths. First, based upon NACWA's historic advocacy on this issue, NACWA plans to file comments supporting EPA's proposed water transfer rule by the July 24 deadline. NACWA will also be working closely with NYCDEP and other organizations interested in the water transfer issue to explore future remedial possibilities in the court system — possibly before the U.S. Supreme Court. ♦

Federal Officials Focus on CSO Challenges At NACWA/Wet Weather Partnership Workshop

NACWA and the Wet Weather Partnership (WWP), in cooperation with the U.S. Environmental Protection Agency (EPA), held a successful *Workshop* on water quality compliance strategies and cutting-edge issues in the development of long-term control plans (LTCPs) to address combined sewer overflows (CSOs). Held on June 1-2 in Chicago, the *Workshop* was the fourth in a series of national workshops and provided a unique opportunity for networking and high-level discussion among municipal officials, consultants, and attorneys with responsibility for overseeing utility CSO control programs.

Some of the best received presentations came from federal EPA officials, such as Ben Grumbles, EPA Assistant

Administrator for Water, who highlighted forthcoming Agency work on affordability, EPA's efforts to finalize a national peak flow (blending) policy, and an upcoming report to Congress on the impacts of CSOs on the Lake Michigan Basin.

Grumbles also stated that the "UAA process requires a lot more attention" and is "absolutely critical." In his closing comments, Grumbles commended NACWA and the WWP for their efforts in putting together the workshop, adding that "it is time for more than just dialogue, it is time for action."

NACWA member agency staff presenting their CSO experiences and lessons learned at the *Workshop* included: Kevin Shafer, Milwaukee Metropolitan Sewerage District, WI; Dax Blake, Columbus, Ohio; and Ralph Wallace, Massachusetts

Water Resources Authority, MA. NACWA Private Affiliates presenting on cutting-edge CSO issues included Jodi Perras, Perras & Associates, Indianapolis, IN; David Evans, McGuire Woods, Richmond, VA; David Burchmore, Squire Sanders & Dempsey, LLP, Cleveland, Ohio; CH2M Hill's Pat Karney, FL, and Reggie

Rowe, AL; and Clyde Wilber, Greeley & Hansen, Upper Marlboro, MD.

Given the continued success of the *Workshop*, NACWA and the WWP will be discussing opportunities to collaborate on future offerings. Presentations from the *Workshop* are posted to NACWA's website (<http://www.nacwa.org/meetings/ppt/06cso/>). ♦

» U.S. EPA Assistant Administrator for Water Ben Grumbles

emphasized his goal "to have some very clear guidance on how to implement EPA's 1997 financial capability analysis" and to "by the end of the year develop a clear action plan to revise and improve" such analyses at NACWA and the Wet Weather Partnership's CSO Workshop. Grumbles said the recommendations contained in NACWA's *Financial Capability and Affordability in Wet Weather Negotiations* White Paper are playing a key role in EPA's deliberations.



NACWA 2006 Summer Conference To Focus on Drinking Water/Wastewater Collaboration

At press time, NACWA is pleased to report that its 2006 Summer Conference is enjoying strong registration as well as an excellent lineup of confirmed speakers. The Conference, *Cross-Cutting Clean Water and Drinking Water Issues...Challenging Traditional Boundaries*, will be held July 18-21, in Seattle, Washington and will examine the power of collaboration in preventing conflicts among drinking water and wastewater stakeholders. NACWA has col-

laborated with the American Water Works Association (AWWA), the Association of Metropolitan Water Agencies (AMWA), and the Water Environment Federation (WEF) in developing the program for the 2006 Summer Conference in an effort to further inform water sector professionals on the challenges our industry faces and to foster additional cooperation in the future. Highlights from the *Summer Conference* will be reported on in the July-August issue of *Clean Water News*. ♦

NACWA Closely Watching Evolution of TMDL Program Post –“Daily” Load Case

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interested in this option, the judicial process still remains a possibility in this case. As an intervenor, DC WASA also could seek review by the Supreme Court. While the Court is interested in resolving conflicts among the federal judicial circuits – and in this case, the D.C. Circuit opinion conflicts with a decision of the U.S. Court of Appeals for the Second Circuit (*Natural Resources Defense Council v. Muszynski*, 289 F.3d 91 (2d Cir. 2001)) – it is unlikely that the Court would accept the case given that it takes only a fraction of the cases presented for review.

On June 27, the U.S. District Court for the District of Columbia (DC) ordered a stay of DC Circuit’s June 16 mandate to vacate the “non-daily ‘daily’ loads” at issue in the *FOE* case – for total suspended solids (TSS) and dissolved oxygen (DO) for D.C.’s Anacostia River. This action gives the

District of Columbia an opportunity to establish daily load limits for DO and TSS. In fact, all activity in the remand of the case is on hold through July 28, again to allow EPA, the District of Columbia, and DC WASA time to confer on how best to proceed.

NACWA to Keep Close Watch On EPA Next Steps

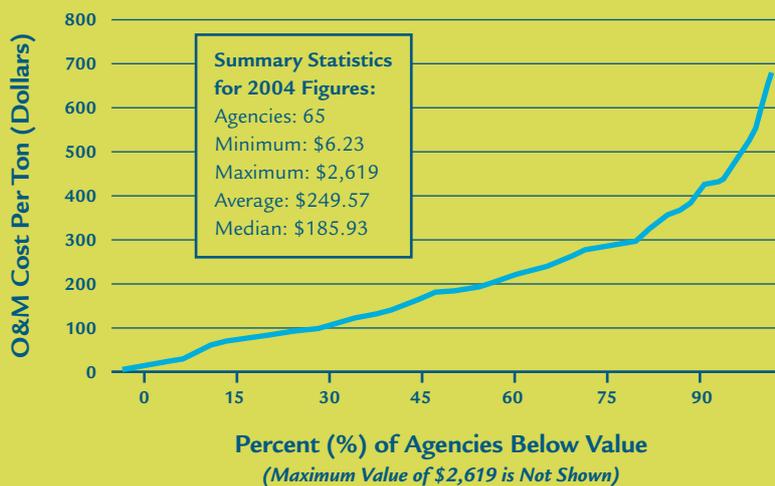
EPA is communicating with the Regions and states on how to best address the court’s ruling, but at this time does not appear to plan any wholesale changes to the federal TMDL regulations. Rather, the Agency is preparing a brief policy memorandum recommending that all states and Regions consider a daily expression of pollutant loadings in a TMDL. While the *FOE* decision is legally binding only in the D.C. Circuit, EPA’s memo is expected to apply to all states and Regions. More detailed EPA guidance on the establishment of these daily expressions will be developed over

the next few months. EPA and DC’s actions on the Anacostia DO and TSS TMDL case may be the first tests of how the *FOE* decision can be followed while still developing meaningful permit limitations to achieve water quality goals. NACWA will carefully review EPA memos and guidance on the *FOE* decision to ensure they address the unique concerns of combined sewer overflow (CSO) communities, municipal separate storm sewer systems (MS4s), and other clean water utility situations.

Finally, the *FOE* court urged EPA to amend, if necessary, CWA § 303(d), which references “daily” loads. Given the limited days that Congress remains in session, and the controversial nature of most environmental statutory changes, at this time it appears unlikely that the Agency, NACWA, or other parties will pursue changes to the CWA on the daily load issue at this time, although future congressional intervention is possible.

CleanWater Central™ Clips

Distribution of Biosolids Operation and Maintenance Costs Per Dry Ton



Source: CleanWater Central™ www.cleanwatercentral.org

Congress Poised to Cut CWSRF; NACWA Highlights Need for Federal Re-commitment To Clean Water

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(WIN), continues to work to elevate clean water financing as a political priority for Congress by advocating for the passage of the *Clean Water Trust Act of 2005*, H.R. 4560. A variety of national organizations, including NACWA, had meetings and fly-ins in Washington, D.C. in May and highlighted their support for H.R. 4560 with their congressional delegations. Cooperative efforts among stakeholder groups and supporting organizations will continue throughout the summer. ♦