

CLEAN WATER NEWS

Ben Horenstein, Manager, Environmental Services, East Bay Municipal Utility District, Calif., will serve as Chair of NACWA's newly renamed Pretreatment & Pollution Prevention Committee, previously the Pretreatment & Hazardous Waste Committee.



4

A Clear Commitment to America's Waters

March 2006

INSIDE

EPA FY 2007 Proposed Budget.....	2
Residential Service Charges Outpace Inflation for Fourth Straight Year.....	2
Legal Briefs.....	3
NACWA Increases Membership.....	3
NACWA President Announces Committee News.....	4
NACWA Works in Coalition to Support Mutual Aid & Assistance Networks.....	5
New White Paper Aids NACWA Members Facing WET Challenges.....	6
CleanWater Central™ Clips.....	6
Service Charge Index.....	Insert

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Register Today... NACWA, WEF Join Forces for May 2006 Clean Water Policy Forum

NACWA and the Water Environment Federation (WEF) are again joining forces for the 2006 *National Clean Water Policy Forum*, May 1-3, at the Capital Hilton in Washington, DC. This year's *Forum* builds on the success of the 2005 conference and will provide clean water utility leaders with a unique opportunity to hear from, and be heard by, the nation's policymakers. Through keynote speeches, panels, and roundtable discussions, leaders on water quality issues at the U.S. Environmental Protection Agency (EPA) and Congress will provide up-to-date assessments of their current activities, including wet weather, biosolids, nonpoint source control, security and funding.

Numerous important meetings and events precede the *Forum*. On April 30 and May 1, NACWA will hold Board and

Standing Committee meetings and host the *National Environmental Achievement and Peak Performance Awards* events. WEF will hold a meeting of its Government Affairs Committee on the afternoon of May 1, followed by a Special Briefing titled "Pandemic Preparedness for Public Utilities." The possibility of an influenza outbreak is real and has serious implications for wastewater utilities — most notably an up to 40% absenteeism rate for the nation's workforce. The *Policy Forum* will officially begin with a *Welcome Reception* on the evening of May 1.

Back by Popular Demand... Political Analyst Charlie Cook

NACWA and WEF are excited to have one of the nation's most sought-after, insightful and wittiest political analysts, Charlie Cook, on hand to provide



⤴ Political analyst, Charlie Cook, will be on hand for NACWA's 2006 *National Clean Water Policy Forum* to provide an insider's look at the political landscape for upcoming congressional elections and the 2008 Presidency.

the Opening Address, *The Shifting Political Landscape... Congressional Elections and the 2008 Presidency*. The Administration's proposed

CONTINUED ON PAGE 5 »

Clean Water Programs Could See Dramatic Cuts for Third Straight Year

The Bush Administration is asking Congress to approve a \$200 million cut in fiscal year (FY) 2007 to the Clean Water State Revolving Fund (CWSRF), thus renewing its commitment to end federal capitalization of the program by 2011. The budget requests only \$688 million for the CWSRF according to U.S. Environmental Protection Agency (EPA)

Administrator Stephen Johnson who, in testimony to the Senate Environment and Public Works (EPW) Committee, said, "This funding level will allow the CWSRF to provide \$3.4 billion in loans annually, even after Federal capitalization ends, and will ensure communities have access to capital for their wastewater infrastructure needs." (see chart on page 2 for more EPA proposed budget cuts).

The proposed cut to the program was called 'unsustainable' by EPW Chairman James M. Inhofe (R-OK), whose criticism of the funding reduction was echoed by both Republicans and Democrats on the EPW Committee. However, despite bipartisan support from Committee members for a

CONTINUED ON PAGE 2 »

Clean Water Programs Could See Dramatic Cuts for Third Straight Year

CONTINUED FROM PAGE 1 »

higher funding level, House and Senate appropriators will be hard pressed to find extra money in the Interior and Related Agencies appropriations allocation to increase any program in EPA's budget in FY 2007.

NACWA and its member agencies began pressing appropriators in early February to include \$1 million in EPA's budget to continue the National Biosolids Partnership's (NBP) environmental management system (EMS) for biosolids program. The House Appropriations Subcommittee on Interior, Environment, and Related Agencies and the Senate Appropriations Subcommittee on Interior and Related Agencies have begun to discuss the fiscal year (FY) 2007 budget for EPA which includes funding for the NBP EMS program. In past years, legislators have realized the importance of the program and have funded it at, or near, the \$1 million threshold. NACWA is hopeful that, despite the Administration's proposed budget cuts, Congress will once again support this critical program.

Time for Trust Fund is Now

The shrinking pot of federal discretionary funds has drawn more organizational support for H.R. 4560, the *Clean Water Trust Act of 2005*. The American Public Works Association (APWA) voted in February to support the bill, and letters of general support have been received by bill sponsor Rep. John J. Duncan, Jr. (R-TN), from a group of environmental organizations as well as from a coalition of national organized labor unions. Duncan has been an avid supporter of the trust fund concept, saying "[A]merica needs a long-term, dedicated source of

funding for water infrastructure – we have an Aviation Trust Fund and a Highway Trust Fund – it's time for a Clean Water Trust Fund." Duncan is slated to be on hand for the 2006 *National Clean Water National Policy Forum* this May to talk further about the legislation (*see related story at page 1*). NACWA is working with stakeholder organizations and members of the Water Infrastructure Network (WIN) to recruit broad organizational support for the bill while working with Rep. Duncan's staff to map out a legislative strategy for the remainder of the FY 2006 congressional session. ♦

EPA FY 2007 Proposed Budget

(Dollars in Millions)

Program or Grant	FY 2006 Enacted	FY 2007 Proposed
Clean Water SRF	\$ 886.8	\$ 687.6
Drinking Water SRF	\$ 837.5	\$ 841.5
Targeted Watersheds	\$ 16.6	\$ 6.9
Pollution Control (Sec. 106)	\$ 216.2	\$ 221.7
Nonpoint Source (Sec. 319)	\$ 204.3	\$ 194.0
104(b) Cooperative Agreements	\$ 0	\$ 0
Wastewater Operator Training	\$ 1.2	\$ 0
Congressional Earmarks	\$ 280.8	\$ 0

Residential Service Charges Outpace Inflation for Fourth Straight Year

Enclosed with this issue of the *Clean Water News* is NACWA's 2005 *Service Charge Index*. The *Index* compares the increase in service charges against inflation for every year since 1986, and also presents a table containing a breakdown of service charges by EPA Region.

The *Index* shows that the average cost of wastewater services for a single-family residence increased by 6.9% in 2005, more than double the rate of inflation as measured by the Consumer Price Index. Since wastewater rates and water use pat-

terns can vary across the country, NACWA has used the sewer service charge as a consistent measure for utilities to employ as a benchmark in comparing the cost of wastewater services to the national average. For the fourth year in a row, the increase in the nationwide average annual charge has outpaced inflation.

Upward Trend Likely to Continue

This upward trend will likely continue over the next decade as the clean water community works to address the infrastructure fund-

ing gap, the rising costs associated with existing requirements, system expansion to facilitate development, and future environmental regulations. As the costs of clean water services rise, they will continue to claim an ever-increasing share of ratepayers' disposable income. Combined with other utility services, such as water and stormwater, the communities NACWA members serve are already beginning to push the limits of their financial capabilities.

Consistently improving utility management and rate increases

are key components to solving the growing clean water infrastructure funding gap, and NACWA's *Index* makes it clear that clean water agencies are doing their part. As municipal costs and needs continue to rise, however, it is critical that the federal government also do its share for clean water in America. The disturbing trend of consistently decreasing federal investment in clean water must not be ignored, and the Association will continue to advocate on behalf of a federal re-commitment in this area. [*see related story at page 1*]. ♦

NACWA Increases Membership

NACWA's National Office is pleased to welcome eight new members into the Association's ranks:

New Public Agency Members

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

New Legal Affiliate

- D. Randall Benn, Partner for LeBoeuf, Lamb, Green & MacRae, LLP will represent the firm. Randy will represent the firm through its Washington, D.C., office.

New Corporate Affiliates

- BPR in Quebec, Canada will have Director of Business Development, Jostran Lamontagne, serve as its representative.
- Inflection Point Solutions located in Overland Park, Kan., will have Manager, Jill Means, serve as the firm's representative.
- McCord & Company based in Alexandria, Va., will be represented by Ann McCord, Principal.
- Chief Executive Officer, Eric Close will be representing Redzone Robotics, based out of Homestead, Pa.
- Stephen Clary, Principal for RMC Water and Environment will serve as the firm's representative. RMC is based in Walnut Creek, Calif.

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.

New NACWA Brochure Available!

Made available for the first time at its 2006 Winter Conference, NACWA now has new membership brochures, highlighting our new name and ongoing environmental ethic. We invite you to help NACWA "grow" its membership by giving a colleague information on the Association. NACWA members are the greatest testimony to the benefit of membership, and by sharing your experiences with your colleagues and business partners you will enhance the Association's voice at the national level and

CONTINUED ON PAGE 4 »

Legal Briefs

NACWA continues its strategic legal presence on behalf of the clean water community.

These *Legal Briefs* detail relevant legal activity and new developments. Additional information on NACWA's cases can be found in the *Legal* section of NACWA's Member Pipeline at www.nacwa.org by clicking on *Litigation Tracking*.

U.S. Court of Appeals Hears Oral Argument in Total Maximum "Daily" Load Case

The U.S. Court of Appeals for the District of Columbia Circuit heard oral arguments in the appeal by Friends of the Earth (FOE) of the total maximum daily loads (TMDLs) for biochemical oxygen demand (BOD) and total suspended solids (TSS) for D.C.'s Anacostia River, on March 2. Historically, EPA has interpreted the word 'daily' in the Clean Water Act's (CWA) TMDL provision as giving EPA ample flexibility to express TMDLs in a variety of ways for the pollutant at hand, including as monthly or seasonal averages. The three-judge panel reminded EPA that it only has this "flexibility" if the words of the CWA are ambiguous.

In this case, the justices made clear through questioning that they do not believe the word "daily" is ambiguous. The court, however, acknowledged the practical policy arguments made by attorneys for EPA and NACWA member agency the District of Columbia Water and Sewer Authority (DCWASA) that without flexibility to express TMDLs in a way that best suits the pollutant and natural spikes in discharge, compliance with TMDL-derived permit limits would be impossible for most combined sewer communities and municipal

separate storm sewer (MS4) permittees. In recognition of the real world difficulty of implementing 24-hour loads in many situations, the court emphasized that EPA could use the power it is granted under the CWA to declare certain pollutants – like BOD and TSS – as not "suitable for such calculation" under the CWA's TMDL provision. A decision from the court is expected in the coming months – but clearly, the outcome of this case could have major implications for NACWA members, and hundreds of TMDLs, nationwide.

U.S. Supreme Court Hears Three CWA Cases

On February 21, the U.S. Supreme Court heard oral argument in three cases concerning the interpretation of the CWA: *Rapanos v. United States*; *Carabell v. U.S. Army Corps of Engineers*; and *S.D. Warren v. Maine Board of Environmental Protection*. The first two cases concern the scope of the CWA's jurisdiction over intrastate wetlands. The third case concerns the scope of the term "discharge" for purposes of CWA § 401's state water quality certification requirements. Collectively, the Court's consideration of these cases could result in landmark decisions defining the scope of the CWA's jurisdiction as it relates to intrastate wetlands and CWA § 401 certification requirements. The Court is expected to issue its decisions before the end of the 2006 term.

CONTINUED ON PAGE 6 »





« NACWA President, Donnie Wheeler shows off the new Association brochure at NACWA's 2006 Winter Conference. Help NACWA reach out to new members by referring a colleague today!

NACWA Increases Membership

CONTINUED FROM PAGE 3 »

expand our network of association industry professionals. By referring a new member to NACWA, you will receive a buy-one-get-one-free registration to any of the Association's meetings and conferences. Contact Robin Davis, Director of Marketing and Membership Development (202/533-1802 or rdavis@nacwa.org), to order membership brochures, learn more about this opportunity, or to refer a colleague! 💧

NACWA President Announces Committee News

NACWA President, Donnie Wheeler, General Manager, Hampton Roads Sanitation District, Virginia Beach, Va., recently announced changes to both the Association's committee structure and leadership. The name of NACWA's Pretreatment & Hazardous Waste Committee has been changed to the Pretreatment & Pollution Prevention Committee, to more accurately reflect the scope of the Committee's efforts. The leadership of the Committee now rests in the hands of Ben Horenstein, Manager, Environmental Services, East Bay Municipal Utility District, Calif., who will serve as Chair along with newly appointed Vice Chair, Martie Groome, Laboratory & Industrial Waste



⤴ Ben Horenstein, Manager, Environmental Services, East Bay Municipal Utility District, Calif.

Supervisor, City of Greensboro, N.C. Guy Aydlett recently retired from the Hampton Roads Sanitation District in Virginia Beach, Va., and in doing so left his role as Chair of the Pretreatment Committee. Aydlett's contributions to NACWA initiatives have been numerous and significant – and are greatly appreciated by the Association.



⤴ Martie Groome, Laboratory & Industrial Waste Supervisor, City of Greensboro, N.C., and newly appointed Vice Chair of the Pretreatment & Pollution Prevention Committee.

Emerging Pollutants Receive Attention

Wheeler also has created an Emerging Contaminants Workgroup, which will join the Mercury Workgroup and Pathogens Workgroup under the umbrella of the Association's Regulatory Policy Committee. This new

Workgroup will bring the expertise and experience of the Association's Water Quality, Pretreatment, and Biosolids Management committees to bear on the important issue of emerging pollutants. The Workgroup will be chaired by David Tucker, Laboratory Supervisor, City of San Jose Environmental Services Department, San Jose, Calif., and will tackle issues such as endocrine disrupting compounds (EDCs), pharmaceuticals and personal care products (PPCPs), as well as industrial chemicals such as nonylphenols. The Association is currently seeking volunteers to serve on this Workgroup to help review technical literature, follow ongoing research projects, and brief NACWA leadership on the science and evolving regulatory issues from their agencies' perspective. Please contact Chris Hornback, chornback@nacwa.org or 202/833-9106, if you are interested.

Wheeler also announced that Adel Hagekhalil, Division Manager, Wastewater Engineering Services Division, City of Los Angeles Bureau of Sanitation, Calif., will serve as Co-Chair of the Facility &

Collection System Committee along with current Co-Chair, Marty Umberg, Sewer Chief Engineer, Metropolitan Sewer District of Greater Cincinnati, Ohio. Departing from the leadership is Karen Pallansch, Engineer-Director, Alexandria Sanitation Authority, Alexandria, Va., who contributed significantly to the Committee's achievements and will continue her active involvement in the Association.



⤴ Adel Hagekhalil, Division Manager, Wastewater Engineering Services Division, City of Los Angeles Bureau of Sanitation, Calif., was appointed Co-Chair of the Facility & Collection System Committee.

The Association's committees, workgroups, and task forces guarantee a strong voice for the nation's clean water agencies, as well as continued water quality progress. 💧

NACWA, WEF Join Forces for Clean Water Policy Forum

CONTINUED FROM PAGE 1 »

budget cuts to key clean water programs, as well as the spotlight on congressional lobbying and earmarks are issues of great importance to the nation's clean water utilities – making Cook's insider perspective extremely relevant and timely.

Cook is Editor and Publisher of *The Cook Political Report*, and a political analyst for the National Journal Group, where he writes weekly for *National Journal* magazine and *CongressDailyAM*. Those familiar with Cook's vast knowledge and entertaining style know that this is a must-attend event.

Top Clean Water Policymakers to Provide Perspectives

The National Clean Water Policy Forum will also provide an unparalleled opportunity for attendees to hear from members

of Congress and interact with professional staff from key House and Senate committees responsible for drafting and negotiating legislation vital to the clean water community. Invited speakers for the *Forum* include Representative John J. Duncan, Jr. (R-TN), Chairman of the Water Resources and Environment Subcommittee, who recently introduced the *Clean Water Trust Act of 2005* (H.R. 4560) and Representative Earl Blumenauer (D-OR). Rep. Blumenauer has been invited to attend the legislative morning session of the *2006 National Clean Water Policy Forum* to discuss his efforts on providing safe water and sanitation to millions of underprivileged people living in developing countries via the *Paul Simon Water for the Poor Act*, which was signed into law in December 2005. From EPA, invited speakers include Administrator Stephen Johnson, Assistant Administrator for Water, Benjamin Grumbles,

and Assistant Administrator for the Office of Enforcement and Compliance Assurance, Granta Nakayama.

Additionally, EPA officials will be part of one of the *Forum's* most popular sessions – the Technical Roundtable Breakfast on May 3. Participants can choose the topics of greatest interest to them and, in an informal setting, discuss their unique concerns directly with the EPA staff who oversee these priority issues. Topics will range from asset management and wet weather to pretreatment issues and emerging pollutants.

AAEE Holds Awards Lunch in Conjunction with Policy Forum

When making your travel plans for Washington, you may wish to include attendance at the American Academy of Environmental Engineers (AAEE) Academy Awards lun-

cheon on Wednesday, May 3. Please contact the AAEE directly at 410/266-3311 or <http://www.aaee.net> for more information about this event.

Register Today for the NACWA/WEF Clean Water Policy Forum

Make your plans to attend the *2006 National Clean Water Policy Forum* in Washington, D.C. by calling the Capital Hilton at 202/393-1000 to guarantee the special conference rate of \$219 single/double. Be sure to mention that you are a participant in the *2006 National Clean Water Policy Forum*. The hotel reservation deadline is **Friday, April 7, 2006**. Watch your mail and visit NACWA's *Conferences & Meetings* website (www.nacwa.org/meetings) for the most up-to-date information on the *Policy Forum* as well as online conference registration. ♠

NACWA Works in Coalition to Support Mutual Aid & Assistance Networks

NACWA, along with the American Water Works Association (AWWA), the Association of Metropolitan Water Agencies (AMWA), the Water Environment Federation (WEF), the National Rural Water Association (NRWA), the National Association of Water Companies (NAWC), the Association of State Drinking Water Administrators (ASDWA), and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), has voiced its commitment to encourage utilities and local/state governments to establish intrastate mutual aid and

assistance networks. With the objective of rapid, short-term deployment of emergency services to restore the critical operations of the affected utility, such networks can complement and enhance local capabilities to prepare for and respond to a broad range of threats, both natural and man-made.

In a joint statement released on February 15, 2006, the organizations went on record in strong support of the establishment of such intrastate mutual aid and assistance networks. Water/Wastewater Agency Response Networks (WARNS) have demonstrated their effectiveness

– in particular in the area of hurricane response. This approach is so compelling that it has been incorporated as a core principle of the National Preparedness Goal developed by the Department of Homeland Security.

Existing WARNS stand ready to support others interested in exploring this concept in their state (see www.FlaWARN.org). The joint policy statement, *Utilities Helping Utilities*, can be accessed on NACWA's *Regulatory Correspondence & Outreach* webpage via the toolbar at the top of the Association's website (www.nacwa.org). ♠

New White Paper Aids NACWA Members Facing WET Challenges

More than a year after the U.S. Court of Appeals for the D.C. Circuit upheld the validity of the U.S. Environmental Protection Agency's (EPA) whole effluent toxicity (WET) test methods, NACWA members continue to face implementation challenges associated with WET monitoring requirements and permit limits. EPA's draft WET Implementation Guidance, which was intended to clarify how WET testing requirements and permit limits should work in the real-world, continues to languish as the Agency grapples with a significant number



of comments critical of the guidance, including those of NACWA. In addition to existing implementation challenges, NACWA has learned that EPA Regions 2, 5, 6, and 8, and the states in those Regions, appear to be under pressure to ensure that discharge permits include limits for the sublethal (chronic) WET endpoints. Unfortunately, these are the endpoints that

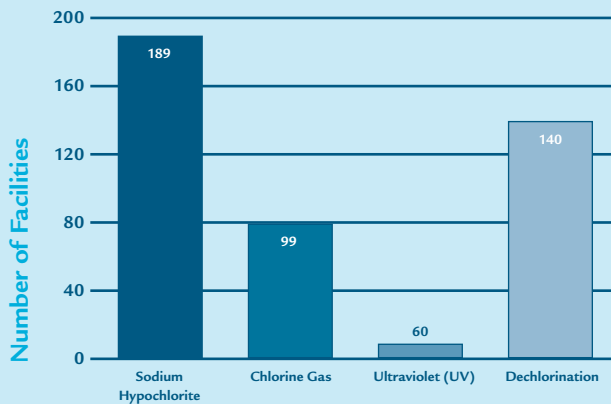
continue to present the most difficulty in implementation.

NACWA's Water Quality Committee, through the Association's Targeted Action Fund (TAF), has developed a white paper, *Whole Effluent Toxicity NPDES Permit Testing and Limitations for Public Agencies*. The white paper captures critical information from the December 2004 U.S. Court of Appeals decision, and the valuable expertise of several NACWA members who have been involved with this issue for more than a decade. Though the December 2004 decision upheld EPA's WET methods, it also contained valuable perspectives

on proper and improper uses of these methods. NACWA's white paper combines this critical information with permit language from across the country, to provide guidance and real-world pointers on how WET permit language can be crafted to compensate for the problems inherent to these test methods. NACWA members can view the white paper on the Association's website (<http://www.nacwa.org/private/wetwp/>). With the white paper in the hands of its members, NACWA is now focusing its attention on EPA's WET Implementation Guidance, which is likely to resurface during 2006. ♦

CleanWater Central™ Clips

Disinfection Methods Employed



Source: CleanWater Central™ www.cleanwatercentral.org

Legal Briefs

CONTINUED FROM PAGE 3 »

NACWA Weighs in on Inappropriate Attorneys Fee Award

On February 15, NACWA filed an *amicus curiae* brief before the U.S. Court of Appeals for the Sixth Circuit to support member agency the Metropolitan Sewer District of Greater Cincinnati (MSDGC). In the case of *U.S. v. Board of County Commissioners of Hamilton County, Ohio*, the U.S. District Court for the Southern District of Ohio held that the Sierra Club was a “catalyst” to MSDGC’s settlement and awarded Sierra Club \$1 million in attorneys’ fees under the CWA’s citizen suit provision (§ 505(d)). NACWA’s

brief highlighted that the catalyst theory has been soundly rejected by the U.S. Supreme Court and that the Sierra Club could not be found as a “prevailing or substantially prevailing party” under the CWA where it opposed entry of the decrees and was not a party to the ultimate consent decrees settling the litigation. NACWA’s *amicus curiae* brief states that the court order “greatly enlarges the scope of the fee-shifting provisions in the CWA and significantly alters the balance intended by Congress when it incorporated the citizen suit provision into the Act’s overall enforcement scheme.” Oral argument will be held in this key case in the coming months. ♦