

**Targeted Action Fund Project Overview and Status Report
Current to April 15, 2005**

Air Quality

Evaluation of WATER9 Computer-Based Model

This project is evaluating EPA's WATER9 model to ensure that hazardous air pollutant (HAP) emissions estimates developed using the model are based on sound science. The project team first met with EPA staff in Research Triangle Park, NC to discuss the project scope and to open a line of communication with the Agency in order to share the findings of the project. The Agency indicated that it was willing to work closely with NACWA as it conducted the review. The contractor has finished Task 1, which entailed a comprehensive literature review of available data on emissions from wastewater collection, storage, treatment, and disposal facilities and an evaluation of the results from running the WATER9 model, in comparison to two alternative models, with the appropriate data. A draft report from Task I was completed on May 11, 2004, and a revised report was delivered to NACWA on June 21, 2004. NACWA discussed the Task I report and recommendations for Task II, including an evaluation of the algorithms/codes used by each of the three models, at a July 19, 2004 meeting with EPA staff in Research Triangle Park, NC. This multi-year project was funded at a total of \$39,800, \$24,250 for Task I and \$15,550 for Task II. Approval to move forward with Task II, which was conditional on completion and review of Task I, was granted at NACWA's National Environmental Policy Forum & 34th Annual Meeting in May 2004. Task II will be concluded in coming months, the result of which will be a white paper for NACWA member agencies to use when dealing with air permitting authorities on air pollutant modeling issues.

Biosolids Management

Radioactivity Dose Model Development

This effort, initiated in 2000, was to develop a dose model or guide for biosolids managers to use in concert with the results from the U.S. Environmental Protection Agency (EPA) and Nuclear Regulatory Commission (NRC) survey conducted to evaluate the level of radionuclides in biosolids. With the release of the final EPA/NRC survey report, the technical experts assisting with this effort also aided NACWA in the preparation of comments on the associated dose assessment and draft recommendations documents. This multi-year project was funded at \$41,500. In April 2005, the final recommendations document was made available and this project was completed.

Utility Management

CleanWater Central

NACWA continues to work to populate the *CleanWater Central* database. Created in 1999, the *CleanWater Central* database serves as a central hub for future data collection activities, such as the financial survey and *NACWA Index*, and as a repository for information vital to the wastewater treatment community. A project advisory committee comprised of NACWA and Water Environment Research Foundation (WERF) representatives developed a set of

policies and a fee structure that were approved by the Board in May 2003. NACWA and WERF completed the beta test of the system on June 30, 2003 and launched the database during the NACWA 2003 Summer Conference in Boston. NACWA and WERF are now working to implement a marketing strategy to increase the number of users on the system. Hard copy survey information accompanied NACWA's Peak Performance Awards application in an effort to increase information in the database. A targeted marketing effort will begin later this year. This is an ongoing project with expenditures for database administration each year. Total NACWA funding approved for this project in FY 2005 is \$12,000.

2005 NACWA Financial Survey

Published every three years, the *Financial Survey* has consistently proven itself to be a valuable resource for NACWA member agencies as they evaluate financing options and consider rate adjustments. The 2005 Survey form was distributed to NACWA member agencies in early April 2005. The *2005 Financial Survey* final report is expected to be released at NACWA's 2006 Winter Conference. A total of \$50,000 has been budgeted for this effort in FY 2005, which covered all Survey development, and will cover all data collection and complete analysis.

International Standards Organization Wastewater and Water Supply Standard Support

The development of international standards (ISO/TC 224) for the wastewater sector by the International Organization for Standardization (ISO) continues to progress and, ongoing TAF funding for this project is needed. The funds are needed to send NACWA registered experts to ISO meetings held abroad, including an upcoming October meeting in Germany. NACWA also expects additional costs related to organizing ISO Task Force meetings as finalization of the wastewater sector document approaches, including a comment round on the draft standard that has a May deadline. Although the final approval of the ISO/TC 224 standard was originally expected to occur in July 2005, recent target deadlines set finalization for April 2007. Total TAF funding for this project in FY 2005 is \$15,000.

Legislative/Regulatory Policy

National Biosolids Partnership

NACWA will continue to utilize the services of an advocacy firm to supplement NACWA's lobbying effort to secure fiscal year (FY) 2006 funding for the National Biosolids Partnership. The lobbyist distributed information and held meetings with Hill staff to gain commitments from Members of Congress to include \$1 million for the NBP EMS for biosolids program in EPA's budget. In the FY 2005 appropriations process, this effort led to the successful inclusion of approximately \$970,000 for the NBP in the omnibus appropriations bill. Total funding for this item includes \$15,000 from NACWA and \$15,000 from WEF for FY 2005.

Advocacy Support – Legislative/Administration Initiatives

NACWA has retained an advocacy firm to support the Association's efforts to advance both legislative and regulatory priorities. This is an ongoing expenditure with total funding of \$72,000 for FY 2005.

Water Infrastructure Network

NACWA's financial contribution to WIN's 2005 budget has funded advocacy support to advance the coalition's legislative goals as outlined in WIN's two reports. Most recent activities have focused on restoring full funding for the clean water state revolving fund and advancing a clean water trust fund bill. This is an ongoing expenditure with total funding of \$25,000 approved for FY 2005.

Government Affairs Rapid Response Fund

The *Government Affairs Rapid Response Fund* was established to provide NACWA with the ability to respond to non-legal time-sensitive issues quickly. The funds have been used to support narrowly focused efforts or initiatives that directly support NACWA's legislative and regulatory advocacy agendas. In fiscal year 2005, examples of such projects include the *Rose-Katonak Report Review* on wastewater blending, which was requested for immediate turn-around at the urging of congressional leadership (this project is not to exceed \$5,000). Other projects include design and printing of NACWA's *CSO-SSO Action Plan Summary* (not to exceed \$1,200) for delivery to all members of Congress, as well as support for a coalition effort that produced a timely report on the state-by-state economic effects of proposed cuts to the Clean Water State Revolving Loan Fund (\$500). An amount of \$30,000 has been approved for FY 2005 and approximately \$6,700 has been spent or committed to date.

Water Quality

Contribution to TMDL Adaptive Implementation Project

NACWA's Board has approved a contribution to a one-year project to conduct workshops and develop a monograph on the interpretation, analytics, and execution of adaptive implementation for total maximum daily loads (TMDLs). Dr. Ken Reckhow of the Center for the Analysis and Prediction of River Basin Environmental Systems, who served as the chair of the National Research Council's (NRC's) Committee to Assess the Scientific Basis of the TMDL Approach to Water Pollution Reduction, and oversaw the issuance of the corresponding NRC report, *Assessing the TMDL Approach to Water Quality Management*, is organizing the project. The first workshop was held October 25 - 26, 2004, in Durham, NC. NACWA participated in the workshop and plans to attend the next two workshops to be held January 19-20 in Irvine, CA, and April 10-12, in Durham, NC. During the final workshop, participants will review a draft of the paper and begin to discuss a release strategy. NACWA approved a one-time contribution of \$25,000 for this effort in FY 2003.

Participation in the Federal Water Quality Coalition

TAF funds support NACWA's continued associate membership in 2005 in the Federal Water Quality Coalition (FWQC). The FWQC provides NACWA with leveraging opportunities and information on a number of important water quality issues, including mercury, total maximum daily loads, and permitting. NACWA approved \$15,000 in annual dues in the Coalition for FY 2005.

Dental Amalgam Separator Study

This project is a two-year study to examine the changes in mercury concentrations in wastewater influent, effluent, and biosolids at five POTWs in the U.S. and Canada. Each of the five facilities has already implemented regulations requiring dental clinics to install amalgam removal equipment. The Hampton Roads Sanitation District has volunteered its laboratory to conduct the analyses at cost for the duration of the study. The first sampling event took place in July 2003 and sampling is continuing as planned. Based on a revised scope and new cost estimates provided to NACWA, additional TAF funding in the amount of \$15,000 was secured in July 2003, bringing the total project cost to \$59,000. NACWA expects to be able to use the results of the study to support a number of its advocacy efforts related to mercury. Based on a preliminary analysis of the first year results, the Mercury Workgroup has determined that a third year of data collection will be necessary to ensure the project database is robust enough to allow it to draw meaningful conclusions at the study's completion. Total approved funding for this project is \$59,000, with \$37,000 approved for FY 2004 and \$30,000 for FY 2005 (\$8,000 was added to the original FY 2005 amount of \$22,000 in February). The Mercury Workgroup plans to make an additional request for FY 2006 funds in July in order to finish the third year of data collection.

Development of Nutrient Criteria for Recreational Users

These funds will be used to support an ongoing study designed to relate nutrient impacts in reservoirs to impairment of recreational uses and provide data that can assist in the establishment of use-based criteria in Texas. The results of this study should be applicable to waters outside of Texas where similar conditions exist. Development of the study was coordinated with the Texas Commission on Environmental Quality, the state agency responsible for the adoption of water quality standards and is being sponsored in part by the Texas Association of Metropolitan Sewerage Agencies (TNACWA). The ongoing project is nearing completion and a final report is expected in Summer 2005. A total, one-time contribution of \$10,000 has been approved for this effort in FY 2004.

Methylmercury Report Review

These funds are being used in support of a joint project with the California Association of Sanitation Agencies (CASA) and the Federal Water Quality Coalition (FWQC) (total project funding of \$45,000) to hire a consultant to conduct a technical review of a U.S. Fish and Wildlife Service report entitled, "Evaluation of the Clean Water Act Section 304(a) Human Health Criterion for Methylmercury: Protectiveness for Threatened and Endangered Wildlife in California." The report makes a number of assumptions that potentially mischaracterize methylmercury's behavior in aquatic ecosystems. Since this report is expected to have a significant impact on the promulgation of mercury criteria for California and potentially for other states, members of NACWA's Mercury Workgroup, CASA and the FWQC have determined that a critical review of the report is necessary. A preliminary report was received in November 2004 and the consultant is now working to incorporate comments received from the co-sponsors. A total, one-time NACWA contribution of \$15,000 was approved for this effort in FY 2004.

Use Attainability Analysis (UAA) Framework

NACWA is conducting this project jointly with the Water Environment Research Foundation (WERF), as WERF subscribers also identified UAAs as an important topic deserving of attention in the near future. This joint NACWA/WERF project will involve updating WERF's 1997 resource *A Suggested Framework for Conducting UAAs and Interpreting Results (Framework)* and republishing the accompanying *Comprehensive UAA Technical Reference*. The end

result of this collaborative effort will be a joint WERF/NACWA report and accompanying technical reference. A project oversight committee consisting of NACWA members was formed to support this project and to assist in contractor selection. The project team, including NACWA and WERF's contractors, has met via conference call to identify a list of issues to address in the guidance. The contractors are preparing a first draft of the guidance. The final publication should be ready for release at NACWA's 2005 Summer Conference. A total of \$40,000 in FY 2005 was originally approved for NACWA to develop and provide the policy, non-technical input to this joint effort. An additional \$8,500 was approved in February for this effort to fund, in part, the design and printing for the final product.

Reasonable Potential Project

NACWA will contribute to an ongoing research project to evaluate alternatives to EPA's reasonable potential (RP) setting process. Through prior research efforts, the principal investigators on this project have gained new insights into EPA's methods for establishing RP, alternative methods for setting RP using model-based endpoint (e.g., IC₂₅, LC₅₀) uncertainty estimates, and methods for incorporating model-based endpoint uncertainty into compliance determinations for WET limits in NPDES permits. The investigators will use industry-specific effluent WET test and metal monitoring data and NPDES permit information to conduct an initial evaluation of the implications of alternative methods for establishing RP 1) on the probability of finding RP for WET and metals, and 2) the number and severity of toxicity and metal limits in industry-specific NPDES permits. The preliminary findings, along with recommendations for future research, will be submitted to the project supporters. The final report will include: 1) a direct evaluation of alternative estimators of RP that can be used by stakeholders in discussions with State, regional, and federal regulatory agencies, 2) an evaluation of the reasonableness and accuracy of current EPA RP procedures, 3) an evaluation of alternative methods for establishing compliance with both biological and model-based endpoints that can be used by stakeholders in discussions with regulatory agencies, and 4) statistical outputs that can be used by stakeholder submissions in response to EPA documents and rulemakings. NACWA expects a final report in May 2005. NACWA has approved a one-time contribution of \$14,000 for this effort to be expended in FY 2005.

Affordability White Paper

These funds will be used to develop a White Paper on *Wet Weather Financial Capability Assessment* to review and critique EPA's existing guidance, and to highlight techniques for making successful affordability arguments. The White Paper will include case studies demonstrating how cities have been able to overcome affordability presumptions with documentation and study, as well as review and critique existing EPA guidance on affordability. NACWA selected a contractor for this project in October 2004. NACWA received a draft in late March 2005 and is working with the contractor to finalize the White Paper in time to be presented during the 2005 Summer Conference. NACWA approved \$20,000 in FY 2005 for this effort.

SSO Model Regulation Development

The project involves incorporating new, and editing existing, Code of Federal Regulations language (via redline/strikethrough) to accomplish two primary objectives. First, the project will draft the regulatory language required to establish the best available technology/best control technology (BAT/BCT) standard for all collection systems and peak excess flow treatment facilities. Second, the project will draft the requisite regulatory language to

establish a satellite collection system permitting program. Such regulatory language will build, wherever possible, upon the existing National Pollutant Discharge Elimination System (NPDES) regulations. NACWA envisions one of the final project deliverables to be a complete set of regulations (with revisions shown) necessary to implement NACWA's proposed BAT/BCT approach. In addition to the new/marked-up, model regulations, the project will include development of an accompanying discussion paper on how a BAT/BCT management, operations, and maintenance (MOM) standard, as detailed in NACWA's *SSO Legal Issues White Paper*, and the collection system permitting program would work, and why certain additions or changes to the regulations were made. The model regulatory text and discussion paper will be the final elements of NACWA's advocacy package, laying the groundwork for future activities in the SSO arena. Finally, given that many states are undertaking permitting of collection systems already, the project will include a national review of the states, a report on the regulatory or permitting program for collection systems, and highlight beneficial elements of such programs (e.g., overflow affirmative defense, BAT/BCT approach). NACWA envisions making this library of information available to NACWA's members via its web site. NACWA has now received the final SSO state database and a draft final version of the model regulation from the contractor. A small group of NACWA members will assist staff with making any final changes to the model regulation, targeting release towards the end of April. A total of \$30,000 (\$15,000 in FY 2004 and \$15,000 in FY 2005) has been approved for this project for contractor fees and associated distribution costs.

Whole Effluent Toxicity Coalition

These funds were approved to ensure NACWA's continued access to the Whole Effluent Toxicity (WET) Coalition, a large coalition of industry and municipal stakeholders that is currently focusing its attention on achieving reasonable approaches to the use of WET test results in reasonable potential determinations and NPDES permitting. NACWA has approved \$5,000 in FY 2005 for coalition dues.

Litigation/Legal Issues

Blending/SSO Appeal

On May 19, the U.S. Court of Appeals for the District of Columbia Circuit will hear oral argument in the blending case appeal, *Pennsylvania Municipal Authorities Association v. EPA*. TAF funds have allowed NACWA to file two comprehensive briefs in the case, which assert that several EPA regions are inappropriately banning blending, and show how EPA historically has authorized the practice. \$20,000 in FY 2005 funds were approved for the appeal and will be fully expended.

D.C. Stormwater Permit Appeal

\$10,000 in FY 2005 funds have been approved to allow NACWA and several other groups to enter the appeal of the District of Columbia's (District's) municipal separate storm sewer system (MS4) permit. In *The Matter of D.C. MS4 Permit*, activist groups assert that the MS4 permit EPA Region 3 issued to the District in 2004 fails to require the stormwater discharges to meet water quality standards (WQS) and lacks include numeric limitations for key stormwater pollutants. NACWA has expended \$7,000 in the case so far. We also collected \$4,000 from other groups to bring the total budget to \$14,000. The parties to the case are contemplating settlement, which may

reduce NACWA's total expenditures in this case.

Whole Effluent Toxicity (WET) Litigation

NACWA spent \$30,000 in FY 2003 and 2004 in this case. In December 2004, the U.S. Court of Appeals for the District of Columbia Circuit upheld EPA's chronic whole effluent toxicity (WET) methods, but made several helpful statements regarding WET issues that should benefit NACWA member agencies. NACWA chose not to participate in rehearing efforts, and is directing efforts towards ensuring EPA's December 2004 WET implementation guidance document is finalized in a workable form for our members. No further funds will be spent on the case.

Total Maximum "Daily" Load Case

On December 30, 2004, the Friends of the Earth (FOE) appealed to the U.S. Court of Appeals for the District of Columbia Circuit the late 2004 decision of the lower federal court that held in NACWA's favor that the CWA does not require total maximum daily loads (TMDLs) to be expressed only as true "daily" loads. NACWA and the CSO Partnership (CSOP) participated in the lower court as *amicus curiae* (\$5,000 in FY 2004). NACWA and the CSOP have filed papers with the appeals court expressing our interest in participating again as amici. NACWA will allocate \$5,000 from the General Legal Support fund for the appeals *amicus* brief.

Exploring Biosolids Management Options – A NACWA Handbook

\$52,000 in FY 2004 and FY 2005 have been allocated to this publication to cover legal services to develop *Handbook* content and design and printing of the resource. The publication will address regulatory and legal developments in the areas of biosolids land application, incineration, and selected other management approaches. Drafting of various *Handbook* chapters is largely complete. We are planning a Summer 2005 release of the *Handbook*.

Cincinnati Stormwater Fee Amicus Brief

NACWA contributed \$3,000 to the National Association of Flood and Stormwater Management Agencies (NAFSMA) to successfully join this case as *amicus curiae* in FY 2004. Further funds may be needed once the U.S. District Court for the Southern District of Ohio sets a schedule for future activity in the case. NACWA and other public agency organizations are participating as *amicus curiae* in this case concerning the U.S. Government's objection to paying Cincinnati for stormwater service.

Catskills Interbasin Water Transfer Amicus Brief

The U.S. Court of Appeals for the Second Circuit will soon schedule oral argument in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York*. NACWA filed a June 2004 *amicus curiae* brief in the case, supporting member agency the New York City Department of Environmental Protection (NYCDEP), to assert that the water quality impacts from local government transfers of untreated, natural water should not be addressed via NPDES permits but rather through state permitting and other CWA programs. The National League of Cities (NLC), the New York State Conference of Mayors and Municipal Officials, and the Association of Metropolitan Water Agencies (AMWA)

joined our brief. NACWA's total FY 2004 costs for the brief were \$5,500. NACWA collected an additional \$4,500 from the other groups.

Missouri Water Quality Standards Intervention

On December 27, 2004 the Missouri federal court entered a consent decree and settlement agreement between EPA and the Missouri Coalition for the Environment (MCE), thereby resolving the litigation over EPA's failure to correct several allegedly deficient Missouri water quality standards and criteria. As intervenors in *MCE v. Leavitt*, NACWA and the Urban Areas Coalition (a group of Missouri NACWA member agencies) agreed with the consent decree and settlement agreement, and will receive notice of any changes or delays as the settlements are implemented. The presence of NACWA members in the case helped bring it to resolution and positioned them to play a key role in future regulatory development. A total of \$30,000 was approved to support NACWA's involvement in this case in FY 2004 and 2005. Given the settlement, unspent funds of approximately \$11,000 were returned to the TAF.

Effluent Guidelines [304(m)] Intervention

NACWA was granted intervenor status in *Our Children's Earth Foundation (OCE) v. EPA* in October 2004. NACWA expended \$6,903 of the initial \$7,000 TAF allocation (FY 2004), as well as \$15,800 in General Legal Support (FY 2004 & 2005) funds, to accomplish this via extensive paper filings and oral argument before the California court. In February 2005, the Board allocated an additional \$15,000 in FY 2005 funds to continue our involvement in this important case through the end of the fiscal year.

Healdsburg Amicus Brief

NACWA awaits an oral argument date in *City of Healdsburg v. Northern California River Watch*. The lower court held that City requires an NPDES permit to discharge to a percolation pond, because the pond is connected to a "water of the United States" via groundwater. NACWA filed an *amicus* brief with California groups to argue that the lower court's decision would expand the NPDES permit program to groundwaters, contrary to Congress' intent. NACWA made a \$1,500 contribution to the brief in FY 2004.

CWA-SDWA Interplay Amicus Brief

\$10,000 in FY 2005 funds are allocated for NACWA to participate as *amicus curiae* in this precedent-setting case on the interplay between the CWA and the Safe Drinking Water Act (SDWA), *City of Cincinnati, OH v. Sanitation District No. 1, KY (SD No. 1)*. In a favorable development, on March 10, the Kentucky Environmental and Public Protection Cabinet did not object to our participation in the case. Activity in the case, however, now is on hold due to hold due to construction complications. If the complications will require changes to the permit, the case could become moot.

Virginia Nutrient Permit Appeal Amicus Brief

On November 30, 2004, NACWA and the Virginia Association of Municipal Wastewater Agencies (VAMWA) successfully gained *amicus* status in *Chesapeake Bay Foundation (CBF) v. Town of Onancock*. CBF is appealing

Onancock's National Pollutant Discharge Elimination System (NPDES) permit because it does not contain nutrient limits. NACWA and VAMWA will file a brief April 18 arguing that it is important to allow the state to complete its scientific studies of nutrients in the Bay so that subsequent facility upgrades will result in measurable water quality improvements. \$10,000 was budgeted in FY 2004, and carried over to FY 2005, to participate with VAMWA in this case.

General Legal Support Fund

These funds are used throughout each fiscal year to consult outside counsel on various regulatory and legal issues, and for general litigation and strategic input and support. The \$40,000 budget in FY 2004 was almost completely expended to fund NACWA's involvement in the Environmental Law Institute (ELI), legal analysis of combined sewer overflow issues, tax and financial legal advice for the Water Infrastructure Network and the National Biosolids Partnership, NACWA's *amicus* brief in the Los Angeles/Burbank California Supreme Court case, legal fees in the effluent guidelines case, and appendix production costs in the WET litigation.

\$40,000 was approved for General Legal Support in FY 2005. Funds have been authorized or expended thus far to continue NACWA's ELI involvement, to obtain legal advice on board governance issues, our daily load appeal *amicus* brief, on the Milwaukee *amicus curiae* brief in the U.S. Supreme Court, and on the effluent guidelines litigation.

Other Issues

WERF Endowment

Since 2001 NACWA has made an annual contribution to the *WERF Endowment for Innovation in Applied Water Quality Research* for the *Paul L. Busch Award*. The *WERF Endowment* was created to encourage development of scientific research and technological innovations that improve the water environment in a sustainable manner. The *Paul L. Busch Award*, presented annually by the *Endowment*, recognizes those outstanding and innovative individuals or teams who contribute significantly to research in water quality and the practical application of research in the water environment. The NACWA Board of Directors approved a total contribution of \$10,000, paid over five years. The first installment was paid in 2001, making the \$2,000 payment in FY 2005 the Association's last payment under its original agreement with WERF.

Anacostia Video Project

NACWA contributed a total of \$5,000 toward the completion of a film titled "The Anacostia: Restoring the People's River", which was produced by the Anacostia Watershed Society on the river, the effectiveness of current cleanup efforts, and growing future needs for the river. The film was unveiled for the first time on Capitol Hill on April 14, with Representatives Chris Van Hollen, Jr. (D-MD) and Eleanor Holmes Norton (D-DC), in attendance, as well as congressional staff and various stakeholder groups. Both Representatives talked about the vital need for the federal government to increase funding to clean up the nation's waterways, such as the Anacostia, and both discussed the need to target this funding to sewer overflow control projects. This contribution was critical given NACWA's presence as a nationally influential water quality organization based in Washington and afforded an excellent opportunity to address key issues via a waterbody with which both Congress and EPA are intimately

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familiar. NACWA intends to show the video at its September 2006 Fall Board and Leadership Retreat as an excellent example of how local advocacy and national issues intersect. The total NACWA contribution to this project was \$5,000 (\$2,500 in FY 2004; \$2,500 in FY 2005).