

Targeted Action Fund Project Overview and Status Report Current to April 17, 2006

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. Task 1 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. Task II has now also been completed, and a draft final report and a regulatory issues white paper were delivered to NACWA in September 2005. Following its discussions during the Association's 2006 Winter Conference, the Air Quality Committee is now preparing a letter to EPA air officials to transmit the draft report for their consideration and to alert them to the problems NACWA found in its evaluation of the model. NACWA will also alert the membership to these problems and ask all members to notify the National Office if they are asked to use the WATER9 model.

Biosolids Management

Biosolids Management: Options, Opportunities & Challenges – A NACWA Handbook

\$52,000 (FY 2004 & FY 2005) was allocated to this publication. Legal services of \$35,000 have been billed, and \$17,000 allocated to design and printing of the *Handbook*. The publication provides useful background on biosolids management and on federal and state biosolids programs, and addresses key regulatory and legal developments in the areas of biosolids land application, incineration, distribution and marketing, landfilling, and selected other management approaches. NACWA previewed the *Handbook* at the Water Environment Federation (WEF) Residuals and Biosolids Specialty Conference in Cincinnati, OH/Covington, KY in March. NACWA expects to release the *Handbook* in late-May.

Mercury Emissions from Biosolids Incinerators

FY 2006 funds in the amount of \$20,000 were approved to support a Water Environment Research Foundation (WERF) project that will evaluate mercury emissions from biosolids incinerators and assess the existing technologies available to control these emissions. WERF's Research Council recommended the project for funding, but the WERF Board chose only to fund half of the \$100,000 needed to complete the project. The leadership of the Biosolids Management Committee believes this project will provide vital information to the NACWA members who currently incinerate their biosolids, especially in light of the Clean Air Act regulations that are expected for these units in 2009. A project committee has been formed and it is currently refining the scope of the project before selecting a contractor.

Legislative/Regulatory Policy

National Biosolids Partnership

NACWA utilizes the services of an advocacy firm to supplement the lobbying efforts of NACWA and WEF to secure fiscal year (FY) 2007 funding for the National Biosolids Partnership. The lobbyist meets with Members and staff to gain support for the inclusion of a minimum of \$1 million for the NBP EMS for biosolids program in EPA's FY '07 budget. Total funding for this item includes \$15,000 from NACWA and \$15,000 from WEF for FY 2006.

Advocacy Support – Legislative/Regulatory Initiatives

NACWA utilizes the services of an advocacy firm to support the Association's efforts to advance its legislative and regulatory priorities. This is an ongoing expenditure with total approved funding of \$72,000 for FY 2006.

Water Infrastructure Network

NACWA's financial contribution to WIN's 2006 budget funds media outreach, member events, and the services of an advocacy firm to advance the coalition's legislative goals. With the successful introduction of H.R. 4560, the *Clean Water Trust Act of 2005*, WIN is now recruiting cosponsors on to the bill. WIN is an ongoing expenditure with total funding of \$25,000 approved for FY 2006.

Government Affairs Rapid Response Fund

The *Government Affairs Rapid Response Fund*, which was established to provide NACWA with the ability to respond to non-legal time-sensitive issues quickly, continues to be used to support key publicly owned treatment work (POTW) priorities. Most recently, the *Fund* has been used to sponsor the eighth annual *Mercury as a Global Pollutant* conference, a white paper describing the need for clean water trust fund legislation for use with key stakeholders and Congress, as well as advertising in publications distributed at the Society of Environmental Journalists' conference to ensure media awareness of NACWA's name change and advocacy priorities. The Fund has also been used to purchase photographs that have been used in the design of the NACWA booth, publications and on its website. It has demonstrated its effectiveness with the continued use of products the Fund has paid for, including the drafting and distribution of the *Rose-Katonak Report Review* on wastewater blending and the design and printing of the NACWA CSO-SSO *Action Plan Summary*, which NACWA continues to use as a centerpiece in its sanitary sewer overflow advocacy. A total of \$30,000 was allocated to this fund for FY 2006.

Litigation/Legal Issues

Cincinnati Stormwater Case (*Amicus* Brief)

NACWA contributed \$3,000 (FY 2004) to the National Association of Flood and Stormwater Management Agencies (NAFSMA) to successfully join this case as *amicus curiae* with other municipal organizations. We

are supporting the City of Cincinnati in its suit against a federal facility that refuses to pay its stormwater service fee because it represents an illegal “tax” on the U.S. Additional funds may be needed in FY 2006 for this case once the U.S. District Court for the Southern District of Ohio sets a schedule for activity.

Catskills Case (*Amicus* Brief)

NACWA expended \$5,500 (FY 2004) on the *amicus curiae* brief in *Catskill Mountains Chapter of Trout Unlimited, Inc. v. City of New York (City)* before the U.S. Court of Appeals for the Second Circuit. We collected an additional \$4,500 total from the National League of Cities (NLC) and the Association of Metropolitan Water Agencies (AMWA), who also signed on to the brief. The New York State Conference of Mayors and Municipal Officials signed on to the brief but did not contribute financially. In this case, the City was fined over \$5 million for operating a drinking water tunnel without an NPDES permit. Oral argument was held in November 2005. NACWA expended some General Legal FY 2006 funds in December 2005 to write a post-argument letter to the court on variances from water quality standards – an issue at play in the case. A decision from the Second Circuit is expected later this year.

General Legal Support

NACWA allocated \$40,000 (FY 2006) to this fund to consult outside counsel on various regulatory and legal issues, for litigation and strategic input and support, and for additional cases. To date, \$28,205 has been expended: to draft a letter to the U.S. Court of Appeals for the Second Circuit in the *Catskills* case; for tax and incorporation advice; to fund analysis of the Clean Water Act (CWA) cases before the U.S. Supreme Court; to supplement NACWA’s involvement in the effluent limitations guidelines (ELG) suit; for additional legal advice on peak wet weather flow blending; to commission a *White Paper* on cross-cutting Safe Drinking Water Act (SDWA) and Clean Water Act (CWA) legal issues; and to support the appeal of the *Friends of the Earth* “daily load” case, before the U.S. Court of Appeals for the District of Columbia Circuit.

304(m) Intervention (Appeal)

In FYs 2004 and 2005, NACWA expended a total of \$27,000 (case-specific line item) plus \$15,800 in General Legal Support funds to achieve a key legal victory in May 2005 before the U.S. District Court for the Northern District of California. Largely relying on NACWA’s legal arguments, the court rejected *Our Children’s Earth Foundation’s* (OCEF’s) challenge to EPA’s recent actions under the Clean Water Act 304(m) effluent limitation guidelines (ELG) program.

In June 2005, OCEF appealed the favorable decision to the U.S. Court of Appeals for the Ninth Circuit. In July 2005, NACWA’s Board approved an additional \$8,000 for NACWA to file a November 23, 2005 brief before the U.S. Court of Appeals to defend EPA’s effluent limitations guidelines (ELG) program. NACWA also expended an additional \$6,000 in FY 2006 General Legal Support funds on this case.

In February 2006, the Board approved \$10,000 in FY 2006 funds to complete our involvement in this critical case. The case is now fully briefed and we are awaiting an oral argument date before the U.S. Court of Appeals for the Ninth Circuit.

Healdsburg *Amicus*

NACWA expended \$1,500 (approved FY 2004, paid FY 2005) to contribute to the *City of Healdsburg v. Northern California River Watch amicus curiae* brief. Oral argument was held on November 16, 2005. In the case, the lower court held that *City* requires an NPDES permit to discharge to its wastewater treatment (percolation) pond, because the pond is connected to a “water of the United States” via groundwater. NACWA’s brief with California groups argues that the lower court’s decision would expand the NPDES permit program to groundwater, contrary to Congress’ intent. A decision from the Ninth Circuit should be rendered in 2006.

SD #1 *Amicus* Brief (CWA-SDWA Interplay)

NACWA allocated \$10,000 (FY 2005) to participate as *amicus curiae* in a precedent-setting case on the interplay between the CWA and the Safe Drinking Water Act, *City of Cincinnati, OH v. Sanitation District No. 1, KY (SD No. 1)*. \$1,794 was expended on initial activities. In December 2005, the Kentucky Environmental and Public Protection Cabinet placed activity in the case on hold until May 2006 due to expected changes to the permit, which could render the case moot. Should the case become moot, remaining funds will be returned to the TAF.

DC WASA CSO Permit Appeal (*Amicus* Brief)

NACWA allocated \$5,000 (FY 2005) to participate with the Combined Sewer Overflow Partnership (CSOP) in D.C. Water and Sewer Authority’s (DC WASA) Phase II CSO permit appeal before the Environmental Appeals Board (EAB). Approximately \$1,500 has been expended to date drafting the appropriate papers. The U.S. Environmental Appeals Board (EAB) has stayed the case until mid-2006, and continues to note NACWA’s and the CSOP’s motion to participate. This case has the potential to raise several precedent setting CSO issues, including: whether EPA has the legal authority to include water quality based requirements in CSO Phase II permits in addition to LTCP derived numeric performance standards; and whether inclusion of a general narrative standard violates a permittee’s ability to know, in advance, the scope of its compliance obligations.

Minnesota Pre-TMDL Permitting Case

\$10,000 (FY 2006) was allocated to, and has been largely expended on, a motion and *amicus curiae* brief effort in *Cities of Annandale and Maple Lake (Cities) NPDES/SDS Permit Issuance* before the Minnesota Supreme Court. This case concerns the question of whether the Minnesota Pollution Control Agency (MPCA) improperly determined that an National Pollutant Discharge Elimination System (NPDES) permit for the *Cities* would not cause or contribute to a violation of water quality standards in a CWA § 303(d) listed water. MPCA reached this conclusion by finding that the new discharge would be effectively “offset” by decreased discharges of the pollutant of concern by other entities in the waterbody. NACWA’s *amicus curiae* brief strongly supports the ability of permitting authorities like MPCA to undertake such analyses. Oral argument is scheduled for May 3. A decision in the case is expected later this year.

Cincinnati Attorneys’ Fee Case (*Amicus* Brief)

\$15,000 (FY 2006) was approved for NACWA to file an *amicus curiae* brief in this case in February 2006 before the U.S. Court of Appeals for the Sixth Circuit on the issue of when attorneys' fees are properly awarded. NACWA highlighted that to receive attorneys' fees under the CWA citizen suit provision, an entity must be both a party to the resolution of the case and truly "prevailing." Oral argument will be held in this key case in the coming months.

Wet Weather Consent Decrees Supplement

\$10,000 (FY 2006) was approved for NACWA to prepare an analysis of wet weather consent decrees entered into by clean water agencies since NACWA's release in 2003 of *Wet Weather Consent Decrees: Protecting POTWs in Negotiations (Handbook)*. 16 new decrees are being analyzed by NACWA Legal Affiliate Squire, Sanders & Dempsey, LLP, which worked with the Association on the original *Handbook*. NACWA hopes to release the *2006 Supplement* to the *Handbook* as a downloadable .pdf document in May. NACWA also plans to re-release the *2003 Handbook* with the *2006 Supplement*.

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. 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 and the 2005 Financial Survey was conducted using a *CleanWater Central* database interface. This is an ongoing project with expenditures for database administration each year. Total NACWA funding approved for this project in FY 2006 is \$15,000.

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 April 2005 and the data collection effort was concluded in mid-August. A total of \$50,000 was budgeted for this effort in FY 2005, which covered all Survey development, as well as all data collection and complete analysis. The *2005 Financial Survey* final report was released at NACWA's 2006 Winter Conference. \$11,000 in FY 2006 funds were also approved to cover printing and distribution cost for the survey.

Service Charge Index and Peak Performance Awards

FY 2006 funds in the amounts of \$2,000 and \$6,000 were approved to enable the Association to conduct the NACWA Service Charge Index survey and Peak Performance Awards program, respectively. These are

critical annual activities that have historically been funded with the General Fund. For FY 2006 and in the future, these vital resources will be funded from the TAF.

ISO Wastewater Management Services Standard Support

The development of international standards (ISO/TC 224) for the wastewater sector by the International Organization for Standardization (ISO) continues to progress with TAF funding being targeted primarily for international travel to ensure the wastewater community's voice is heard. Recently, the funds have been used to send two NACWA registered experts to Berlin, Germany in October 2005 and Pretoria South Africa in December 2005, during which drafts of the standard were reviewed and edited. NACWA also expects additional costs related to organizing ISO Task Force meetings and conference calls as finalization of the wastewater sector document approaches. A draft international standard (DIS) is expected in April 2006. NACWA anticipates costs associated with the convening of the U.S. experts to discuss comments on the draft and sending experts to participate in the next Technical Committee (TC) meeting to discuss those comments with the other international experts. A total of \$10,000 in new Targeted Action Funds has been approved for this ongoing effort in FY 2006.

Changing Workforce Publication – Seizing the Opportunity

NACWA and the Association of Metropolitan Water Agencies (AMWA) have completed work on a publication to complement the March 2004 AMSA/AMWA publication entitled *The Changing Workforce . . . Crisis and Opportunity*. The 2004 publication provided an excellent overview on a number of future trends affecting drinking water and clean water agency workforces in the coming decade. This new publication provides a “hands on” resource for utilities as they work to address current and future workforce challenges and was released at the 2006 Winter Conference. A total of \$30,000 in FY 2006 funds has been approved for NACWA's contribution to the project.

Asset Management Handbook Update

NACWA, AMWA and the Water Environment Federation (WEF) are conducting a joint effort to develop an updated asset management guide to benefit the clean water community, and the membership of each organization. It is envisioned that this guide will be a companion publication to the *Asset Management Handbook* that was prepared in 2001. The companion document will be a practical guide and workbook that will include the fundamentals of asset management extracted from the *Handbook*, along with step-by-step guidance and worksheets to help utilities successfully implement asset management processes. A total of \$25,000 in FY 2006 funds has been approved for NACWA's contribution to this effort.

Water Quality

Contribution to TMDL Adaptive Implementation Project

NACWA's Board approved a one-time contribution to a 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 has also participated in subsequent workshops held January 19-20, 2005, in Irvine, CA, and April 10-12, 2005, in Durham, NC. Review among the panel members continues and a final document will likely be delayed until this Summer. NACWA is generally pleased with the current draft of the document but believes the additional time will allow for much needed discussion on several key issues that are now being debated among the panel. 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 2006 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 to the Coalition for FY 2006.

Dental Amalgam Separator Study

This project is a three-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). In July 2005, the Mercury Workgroup received an additional \$23,000 in FY 2006 funds to finish the third year of sampling, bringing the project total to \$90,000 over three years.

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 final report is still pending as the FWQC works to make several revisions to the document. A total, one-time NACWA contribution of \$15,000 was approved for this effort in FY 2004.

Use Attainability Analysis (UAA) Handbook

NACWA conducted this project jointly with the Water Environment Research Foundation (WERF), as WERF subscribers also identified UAAs as an important topic deserving of attention. This joint NACWA/WERF project involved updating WERF's 1997 resource *A Suggested Framework for Conducting UAAs and Interpreting Results* and republishing WERF's *Comprehensive UAA Technical Reference*. A project oversight committee consisting of NACWA members supported this project and assisted in contractor selection. The publication was sent to the NACWA membership in February. 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 2005 for this effort to fund, in part, the design and printing for the final product. NACWA and WERF are now planning a web seminar series featuring the publication.

Reasonable Potential Project

NACWA has contributed to a 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 received preliminary findings for the study in October 2005. A more detailed analysis is underway with an expected completion date of June 2006. NACWA approved a one-time contribution of \$14,000 for this effort in FY 2005.

National Water Quality Monitoring Council Meeting Sponsorship

Fiscal Year 2005 funds in the amount of \$10,000 were approved for NACWA to sponsor the National Water Quality Monitoring Council's 2006 national meeting in San Jose, California. The National Conference is the only meeting of its kind in the United States and provides a rare opportunity for the water monitoring

community to identify current and future monitoring needs and ensure that key federal and state stakeholders understand those needs. Co-sponsorship of the conference includes several added benefits including the listing of NACWA's name and contact information in the final conference program and on the conference website, identification signage at the site of the sponsored event, and more.

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 2006 for coalition dues. NACWA is currently determining whether the expenditure for FY 2006 is necessary given the recent developments on WET.

Whole Effluent Toxicity White Paper

Funds in the amount of \$10,000 were approved in May 2005 to assist NACWA in the preparation of guidance for the membership detailing specific permit language that could be used as a negotiation tool when dealing with regulators on whole effluent toxicity (WET). The objective was to provide useful language that will help members avoid some of the pitfalls associated with WET monitoring requirements and permit limits. Members of NACWA's Water Quality Committee provided significant in-kind contributions to this project. The White Paper was released to the membership in January 2006.

Other Issues

Water for People

NACWA approved FY 2006 funds in the amount of \$5,000 for contribution to Water for People. Robert Hite, District Manager for the Metro Wastewater Reclamation District in Denver, Colorado represents the Association on the Water for People Board of Directors.