

CLEAN WATER ADVOCATE

Representative Bob Latta (R-OH) joined with his colleague Representative Tim Walz (D-MN) to introduce the Clean Water Affordability Act on January 14.



A Clear Commitment to America's Waters



DECEMBER 2013/JANUARY 2014

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Bipartisan Clean Water Affordability Bill Introduced in House

Representatives Bob Latta (R-OH) and Tim Walz (D-MN) introduced legislation on January 14 to ensure that clean water agencies that are facing unprecedented financial challenges have the flexibility they need to undertake clean water projects in a manner that minimizes financial impacts on stressed ratepayers and strapped municipal budgets.

H.R. 3862, [The Clean Water Affordability Act](#), would codify the U.S. Environmental Protection Agency's (EPA) Integrated Municipal Stormwater and Wastewater Planning Approach Framework to help communities meet their regulatory obligations under the Clean Water Act in a prioritized and sustainable manner. Under the integrated planning approach, communities could create a schedule of priority projects for wastewater and stormwater permit obligations to ensure available funds go to those projects yielding the greatest water quality benefit first. The bill would also extend permit terms up to 25 years to support the commitments a community makes under its integrated plan.

H.R. 3862 would also require EPA to revise all guidance documents regarding financial capability. In line with these revisions, the legislation seeks to broaden the manner in which financial capability determinations are conducted to more accurately reflect a community's financial challenges including age of population, unemployment rate, poverty rate, fiscal health and other considerations. Currently, Median Household Income (MHI) is used as the predominant indicator of financial capability for a community. Relying on a more narrow matrix and the MHI indicator does not allow for determinations to take into full account the significant and diverse fiscal constraints faced by communities and their ratepayers.

Finally, the legislation would make some key changes to the Clean Water State Revolving Fund (CWSRF) loan program, including 1) an extension of the repayment period for authorized clean water investments to up to thirty years, 2) authorizing additional subsidization such as principal forgiveness for communi-

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Winter Conference Agenda to Focus on Critical Drivers for Clean Water

NACWA's 2014 Winter Conference, *Compliance, Collaboration & Cost . . . Critical Drivers for Clean Water*, is just around the corner. Slated for February 2 - 5, 2014 in Santa Fe, N.M., the conference will spotlight how utilities across the country are exploring more holistic approaches to meeting Clean Water Act obligations and rehabilitating their aging water infrastructure. Rather than focusing on individual requirements one at a time, utilities today having considerable success addressing multiple requirements while collaborating with other agencies and the community.

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FY2014 Budget Passes, Funds the SRFs Above President's Request

Congress passed and President Obama signed a \$1.012 trillion bipartisan spending package that will ease the harshest effects of last year's automatic budget cuts and guarantee the government stays open through October 1. The package, one of the largest ever passed in Congress, covers the entire federal discretionary budget for Fiscal Year (FY) 2014, including the Environmental Protection Agency (EPA).

Considering the current fiscal climate, EPA fared well and is funded at \$8.2 billion, \$143 million less than the FY2013 funding levels. The same goes for the Clean Water and Drinking Water State Revolving Funds (SRF), which will receive \$1.449 million and \$907 million, respectively. These numbers are also slightly reduced from the FY2013 funding levels of \$1.465 million and \$923 million. NACWA has been an outspoken advocate for maintaining Clean Water SRF funding and was pleased to see appropriations for the SRF programs exceed the President's 2014 budget request. This is a sign that despite widespread desire to cut government spending, the value of these programs contin-

ues to be recognized.

Congress also renewed provisions requiring the States to set-aside a portion of SRF funds for projects related to green infrastructure, energy efficiency and water efficiency and continued the authority requiring States to provide additional subsidization with a portion of their SRF allocation. In addition, Congress also stipulated that SRF-funded projects comply with Buy American provisions requiring that products consisting primarily of iron and steel are made in America. Unfortunately, the funding request for pilot projects under EPA's Integrated Planning initiative was not included in the package. NACWA will debrief with appropriations staff soon to determine whether pursuing this request for next fiscal year is feasible. NACWA will continue to track developments on the budget closely. For questions or more information on the FY2014 discretionary spending levels for EPA programs NACWA monitors, please contact [Patricia Sinicropi](#) or [Hannah Mellman](#).

Leading Sector Organizations to Host Water Policy Forum & Fly-In

NACWA, the Water Environment Federation (WEF), and the Water Environment Research Foundation (WERF) are joining forces to present the *National Water Policy Forum & Fly-In*, April 7 - 9, 2014, at the Capitol Hilton in Washington, D.C. The anchor event of Water Week 2014, the *Policy Forum & Fly-In*, will bring together water and wastewater professionals from across the country to meet with Members of Congress and federal regulators to share perspectives on federal clean water policy. The two and a half day agenda features Congressional speakers, policy briefings, visits to Capitol Hill, and roundtable dialogues with key policymakers.



On April 9, Congress will host a Water Infrastructure & Innovation Expo. Part of Water Week 2014, the Expo will provide an opportunity for Members of Congress, congressional staff, federal agency employees, and the public to visit booths and displays of major water associations, federal agencies, foundations, technology innovation organizations, and engineering firms.

With Water Policy Forum & Fly-In registration set at \$250 - and Expo events free - we anticipate participation from across the country and a huge presence in Washington and on Capitol Hill. Additional information about Water Week 2014 will soon be available www.WaterWeek.us. For registration information about the *Policy Forum & Fly-In* visit our [website](#).



NACWA Active in Litigation, Legal Advocacy

NACWA has been busy in recent weeks, aggressively advocating in the nation's courtrooms and working to provide the Association's members with valuable legal resources. Additional information on the cases below and all of NACWA's litigation activities is available on the Association's [Litigation Tracking](#) webpage.

Court Dismisses Water Quality Trading Challenge

A federal court [dismissed](#) an environmental activist challenge to water quality trading programs in the Chesapeake Bay on Dec. 13, providing a key legal victory for trading programs both within the Bay watershed and nationwide. The court dismissed the case on procedural grounds and did not rule directly on the merits of whether water quality trading programs in general are legal under the Clean Water Act (CWA). There is, however, language in the decision suggesting that specific trading programs and offsets can be legal as long as they comply with the overall requirements of the CWA. NACWA joined with a number of other municipal organizations to [intervene](#) in the litigation in early 2013 in defense of water quality trading. The Association applauds the decision and the positive language in the ruling in support of trading programs.

NACWA Acts to Defend Permit Shield

On January 7, NACWA joined a coalition of groups to file a [brief](#) in a case before the U.S. Court of Appeals for the Fourth Circuit supporting the "permit shield" defense available to dischargers under the CWA permitting program. The permit shield defense, which holds that a discharger in full compliance with their discharge permit cannot be sued for violation of the permit, is a critical one for permittees under the CWA. Although the facts of the case deal with a mining permit, a ruling from the Fourth Circuit will have national implications for municipal wastewater and stormwater utilities. Given the importance of the permit shield to NACWA members for protection from citizen suits,

the Association is participating in the case to help preserve the permit shield as a strong and robust defense to enforcement actions.

Brief Filed on Nutrient Permit Limit Issue

In late December, NACWA collaborated with the Wet Weather Partnership and a number of state municipal clean water groups to [defend](#) the flexibility of permitting agencies in crafting nutrient limits for discharge permits. The brief was filed with the U.S. Environmental Appeals Board (EAB) in an administrative [permit appeal](#) addressing whether discharge permits must include true daily maximum limits for nutrients rather than weekly/monthly average limits. The appeal could have broad national implications on how to set "daily" discharge limits for nutrients. The joint municipal brief supports the discretion of permitting authorities to translate total maximum daily load (TMDL) daily targets into more flexible and appropriate average limits in specific permits, especially for nutrients.

Work Underway to Update Consent Decree Negotiation Handbook

NACWA is in the process of developing a new *2014 Wet Weather Consent Decree Handbook*. The first Handbook, released in 2003, was extremely well received by the membership and has served as a valuable tool for municipal attorneys, managers, and staff to use during negotiations over federal or state enforcement actions. But the consent decree negotiation landscape has changed drastically in recent years with new challenges coming into play related to integrated planning, affordability, climate/resiliency, green infrastructure, and consent decree modification. The new *Handbook* will address many of these emerging issues and provide NACWA members with a cutting-edge resource to assist them in navigating the consent decree process. The document is scheduled for release in April 2014 as an online publication, which will be a more searchable, revisable, accessible and interactive tool for the NACWA membership.



Winter Conference

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Sawyers to Keynote Conference

Keynote speaker Andrew Sawyers, Director of the U.S. Environmental Protection Agency's (EPA) Office of Wastewater Management, will address the regulatory issues that are a focus of the Agency today and the possible direction that may be taken on these issues. Featured speaker Mike Hightower from Sandia National Laboratories will explore the cooperation between energy and water utilities that could be an important component of the Utility of the Future model of resource recovery at clean water agencies. In addition, panel presentations will focus on a number of the regulatory and technical

challenges – and opportunities – facing the clean water community today, including nutrient control, integrated planning, wet weather compliance, and inappropriate products flushed into the sewer system.

Additional information on NACWA's 2014 Winter Conference can be found at www.nacwa.org/14winter.

2014 Off to a Busy Start on the Regulatory Front

NACWA hit the ground running in 2014 with comments on the U.S. Environmental Protection Agency's (EPA) proposed *Water Quality Standards Regulatory Clarifications*, EPA's *Climate Change Implementation Plan*, and the Agency's *Draft Fiscal Year 2014-2018 Strategic Plan*, all filed within the first three days of the year.

Concerns Raised over EPA's Proposed WQS Regulation Revisions

NACWA's January 2 comments on EPA's proposed *Water Quality Standards Regulatory Clarifications* provided input on all six of EPA's focus areas: 1) administrator's determination; 2) designated uses; 3) triennial reviews; 4) antidegradation; 5) variances; and, 6) compliance schedules. In addition, the Association suggested that, to the extent EPA finalizes the rule revisions, the Agency should take the opportunity to include language that reinforces the value and appropriateness of water quality trading as a regulatory tool to facilitate implementation of water quality standards.

Consistent with its comments on an earlier notice, NACWA's January 2 letter notes that there is no urgent need for regulatory changes to address the issues laid out in the proposal. The Association understands that many of the changes are intended to facilitate more consistent implementation among the states, but NACWA's letter stressed that EPA should instead work to address such issues directly with its state partners rather than attempting to achieve more consistency through additional regulatory requirements.

Consultation with Utilities Urged on EPA Adaptation Implementation Plan

NACWA sent comments to EPA on January 3 about the Agency's *Draft Office of Water Climate Change Implementation Plan*, which was written in response to Executive Order (EO) 13514, *Federal Leadership in Environmental, Energy, and Economic Performance*. The *Implementation Plan* draws on and helps implement the *National Water Program 2012 Strategy: Response to Climate Change* that was published in December 2012. The *Strategy* contains 19 goals and 53 strategic actions that provide a long-term approach to deal with the challenges that climate change will present to the nation's water resources and to utilities in particular.

In addition to providing recommendations to more closely align the *Implementation Plan* and the *2012 Strategy*, NACWA urged EPA to engage local utilities in climate adaptation work. Although the *Implementation Plan* includes a 'priority action' to "[e]ngage key stakeholders in climate change adaptation work by continuing to support the State and Tribal Climate Change Council that advises the National Water Program," the Association stressed that "there is no similar action for engaging local utilities or the associations that represent them – a serious omission since these utilities will be the most significantly impacted." NACWA also expressed concerns about the Office of Water's (OW) goal to include climate change science or trend information in a major rulemaking prior to 2015. The Association stated that "utilities should consider all relevant site-specific data in their planning and decisions, but local-level climate

science and trend data varies considerably across utilities and model projections, and it will be difficult for OW to incorporate this type of information into a national rule." NACWA will continue to discuss these issues with EPA and encourage them to seek utility input into the Plan.

Importance of Cross-Media Impacts Highlighted in Comments on Strategic Plan

Also on January 3, NACWA commended EPA for its continued focus on nonpoint sources in comments on the Agency's *Draft Fiscal Year 2014-2018 Strategic Plan*. The Association's comments underscored that while the *Draft Plan* reiterates the Agency's focus on controlling pollution from nonpoint sources, it fails to acknowledge that, as EPA's clean water programs are implemented, point sources remain under constant pressure from state and EPA regulatory and enforcement actions – and are often the only sources required to do anything substantive to improve water quality. This ongoing pressure is coming at an ever-increasing cost for consistently decreasing water quality benefits.

The *Draft Plan* promises a new era in partnerships. EPA has taken an important first step toward restoring its partnership with local government through development of the *Integrated Planning Framework*. NACWA's comments highlighted that the *Draft Plan*'s water goal should more expressly recognize the role local government plays in implementing the Clean Water Act (CWA) – and the importance of the *Integrated Planning Framework* and the corresponding *Affordability Framework* that is still under development. The Association also highlighted the work under way at clean water agencies across the country to improve their operations, reduce energy consumption, recover resources, and generally improve the sustainability of their operations. EPA's increasingly stringent water quality mandates, however, can run counter to these efforts and NACWA urged the Agency to look for ways to address these hurdles to facilitate more innovation.

The issue of cross-media impacts was a major focus of NACWA's comments. On the climate front, the *Draft Plan* highlights the importance of evaluating the impacts of climate change when implementing the Agency's air and water programs – but lacks any consideration of the greenhouse gas impacts associated with certain clean water mandates. NACWA's comments highlighted the need for the Agency to evaluate "how actions under one EPA goal area may run counter to objectives under another goal." For example, limit of technology controls that are being imposed on clean water agencies to address nutrient discharges under the CWA require large amounts of energy and/or chemical use. NACWA also highlighted that clean water agencies are now facing the potential for regulations designed to limit the discharge of substances, such as triclosan, that EPA's toxic substance and pesticide office continues to approve and allow in products. The Association's comments stressed that "EPA's chemical safety and pollution prevention goals should acknowledge this growing problem and identify actions to help prevent" these conflicts between its regulatory programs. ■

NACWA, One Voice for Clean Water

NACWA is the advocacy organization representing the interests of the clean water community. The Association's expanding membership creates a stronger voice and a more influential advocacy initiative. The association proudly welcomes two new Public Agency members.

[Arlington County Department of Environmental Services – Water Pollution Control Bureau, VA](#)

Represented by Larry Slattery, Bureau Chief

Rejoining NACWA in January, Arlington County Department of Environmental Services – Water Pollution Control Bureau is a public wastewater system that services a population of 291,000. Arlington County offers services in collection, treatment, and municipal stormwater.

[Avon Lake Regional Water, OH](#)

Represented by Todd Danielson, Chief Utilities Executive

Joining NACWA in early December, Avon Lake Regional Water is a public wastewater system that serves a population of 27,700. Avon Lake offers services in collection, treatment, wholesale drinking water, and drinking water distribution.

All NACWA members are encouraged to make the most of their membership through participation in the Association's active committees, engagement in its awards programs, and attending conferences, workshops, and web seminars. Another great benefit of NACWA membership is that it's organizational – allowing all staff at your organization to take advantage of the resources and information the Association offers. If there are additional key members of your staff who you feel would benefit from receiving NACWA Correspondence, or participating on NACWA Committees, please contact Christian Howard, Membership Development Coordinator at choward@nacwa.org.

NACWA Launches Engage 2.0

For the past several months, NACWA has been working to expand member benefits through networking and collaboration tools. The centerpiece of this effort is *NACWA Engage™*, a customized online collaborative platform for the clean water community. By using *Engage* NACWA is starting new conversations and forging new connections.

The *Engage* site will help clean water utilities and professionals from around the country better collaborate on key issues and help find solutions to everyday municipal problems. A key feature of *Engage* is the *Open Forum* discussion group – a perfect place for peer to peer discussion. Discussions are distributed through a *NACWA Daily Digest* e-mail sent every weekday.

Discussions Heating Up

While recently launched, we have seen a great response from the NACWA membership, with over two dozen discussions taking place on the site. Thank you to all of our thought leaders and contributors for diligent, thought provoking posts. We look forward to increased engagement as the site progresses.

Check out the *NACWA Engage™ website* and get acquainted with your peers throughout the country. If you have questions on this new member benefit, contact Robin Davis, Director of Marketing & Social Media at 202/533-1802 or rDavis@nacwa.org.



Clean Water Affordability Bill

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ties that need it, and 3) ensuring that small communities receive a portion of available financing under the CWSRF program.

NACWA thanks Reps. Latta and Walz for introducing such important legislation, and will be working with the Congressmen to build greater bipartisan support for the bill.



Trying to Spy your Next
Job Candidate?

Check out NACWA's Clean
Water Careers Page!