

YEAR IN REVIEW 2010-2011



One Voice for
Clean Water

NACWA
A Clear Commitment to America's Waters

A Message from NACWA's President & Executive Director

This past year has been marked by significant challenges and political change, including economic turmoil that continues to impact all levels of government and a shift in Congress to a more conservative approach to many issues – including the environment. Anticipating these trends, NACWA has sought to get out in front and position the organization and its members to maximize the Association's effectiveness.

This is perhaps best exemplified through NACWA's advocacy in the context of its Money Matters . . . Smarter Investment to Advance Clean Water™ campaign. Through its Money Matters Task Force NACWA has been the leading voice for critical regulatory prioritization reform under the Clean Water Act (CWA), seeking to stretch every ratepayer dollar as far as possible to maximize water quality benefits. As the U.S. Environmental Protection Agency (EPA) continues to ramp up its regulatory and enforcement agenda, this initiative offers an approach to fully comply with the CWA while bringing relief to those who are footing the bill – clean water agency ratepayers. And while the Money Matters™ campaign articulates the Association's vision for a much-needed fresh look at the how the objectives of the CWA can and should be prioritized, it also exemplifies the need to be even more aggressive when weighing in on the many legislative, regulatory and legal issues that are far too numerous to mention in this message. These issues are described throughout NACWA's Year-At-A-Glance and in more detail in our online publication, the Year in Review.

It is clear that NACWA's regulatory, legislative and legal advocacy efforts are increasingly interrelated. While the Association continues to work with EPA toward a sound national stormwater rule, NACWA also successfully secured the passage of legislation requiring federal entities to pay their fair share of municipal stormwater fees, resulting in millions of dollars in previously unrealized revenues for municipalities. Similarly, our work in the nutrient arena has included a NACWA-hosted a Nutrient Summit and resulting issues paper; organization of a working group and coalition to advocate of behalf of a Farm Bill that addresses agriculture's role in the water quality equation; receipt of a Turner Foundation grant to develop an outreach and advocacy strategy to ensure nonpoint source are brought to the table; participation in key litigation on the Chesapeake Bay TMDL and Florida nutrient criteria development; and, testimony in a June House of Representatives hearing on the need for state flexibility in developing nutrient criteria.

On the issue of sewage sludge incineration (SSI), not only did NACWA secure substantial changes in the final SSI rule – freeing many member utilities from significant expenditures – the Association also ensured that Members of Congress weighed

in with EPA on their disappointment with the Clean Air Act rule. Of greatest significance, the Association became the primary plaintiff against EPA in an effort to ensure the SSI regulation was in line with clear statutory intent and the principles of sound science. The SSI issue marks the first time that a lawsuit has been lodged and titled NACWA v. EPA, demonstrating the Association's evolving and renewed commitment to not only work with EPA where appropriate, but also drawing a strong line when all other avenues and alternatives have been exhausted.

On the sanitary sewer overflow (SSO) front, NACWA's continued pressure on EPA led to a mid-July facilitated discussion with stakeholders. The uncertainty communities face – with no clear and consistent policy on what is expected of them when managing their sanitary sewer systems – will perpetuate inconsistent progress on addressing SSOs. In the coming year we will need to maintain our stance with EPA to ensure the important momentum generated by the stakeholder discussion is not lost.

In the national policy arena it is often difficult to quantify the impact of an association's advocacy efforts. The efforts mentioned above and others described in this Year-In-Review demonstrate that membership in NACWA is an investment that pays great dividends. Together we will continue to put the right advocacy strategies in place to ensure our interests, your ratepayers' interests, the environment, and public health are protected.



Jeff Theerman

Jeff Theerman
NACWA President 2010-2011

Executive Director, Metropolitan
St. Louis Sewer District, Mo.



Ken Kirk

Ken Kirk
Executive Director

Affordability, Regulatory Prioritization & Infrastructure Funding

Money Matters™ Campaign Provides Viable Approach as CWA Regulations, Enforcement Expand

There is a growing recognition that the Clean Water Act (CWA) can no longer move forward without regard to the economic realities being faced by the nation's municipalities. It seems that every regulatory issue is deemed a priority while cost is too often ignored. The current political and economic landscape has provided a unique opportunity to make the case that such an approach is no longer viable, sustainable or acceptable.

With this in mind, NACWA launched its *Money Matters . . . Smarter Investment to Advance Clean Water™* campaign. This past year the Association has released several key *Money Matters™* reports including *The Solution is Within our Reach . . . the Message is Clear*, a two-page leave-behind outlining the goals and objectives of the campaign – as well as a White Paper and accompanying glossy tri-fold, *Two Sides of the Same Coin . . . Increased Investment & Regulatory Prioritization*. This document took an economist's approach, overlaying federal investment trends with some disturbing data on the apparent reversal of the water quality gains achieved by clean water agencies in the decades following the 1972 enactment of the CWA. The White Paper also explored the economic benefits of a new approach to regulatory prioritization while seeking some solutions to the underlying challenge of aging clean water infrastructure.

Building on the momentum created by these reports, NACWA convened a March 1-2, 2011 *Money Matters™ Summit* in Washington, DC – with participants taking the campaign's message to Capitol Hill and laying the groundwork for regulatory prioritization legislation. NACWA took the positive feedback generated by the Summit and embarked, via its *Money Matters™ Task Force*, on an effort to craft legislation. This effort included a facilitated session with key groups, including the Water Environment Federation (WEF), the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA), and the American Public Works Association (APWA) – and was a focus of discussions at NACWA's *National Clean Water Policy Forum* in May.

As the legislative drafting effort progressed, NACWA took key concepts from the legislation up to Capitol Hill for meetings in the U.S. Senate and House of Representatives, developing significant support for its anticipated introduction upon its finalization. At press time, the legislation awaits introduction. In its final form the bill ensures that municipal flexibility is maximized and that affordability and financial capability concerns are addressed based on complex and often shifting community conditions. Perhaps more importantly it provides

a process that allows municipalities to seek compliance schedule alterations under a menu of key changed economic, demographic, and other circumstances and is poised for introduction.

The *Money Matters™* mantra is present in a diverse array of Association priorities. NACWA has secured support for its *Money Matters™* approach in the U.S. Environmental Protection Agency's (EPA) agency-wide regulatory review, required this year via Presidential Executive Order. Key issues, including nutrients, stormwater, and sewage sludge incineration have provided critical opportunities for the Association to demonstrate the need for a new approach – one that lets municipalities act as the drivers for prioritizing compliance with existing and new Clean Water Act regulations.



MoneyMatters™
Smarter Investment to Advance Clean Water

NACWA Ramps up Advocacy on Federal Clean Water Funding

As this year moved forward, and Congress began to undertake efforts to rein in the deficit and cut federal spending, NACWA ramped up its advocacy efforts to support continued federal investments in clean water infrastructure. Much of the Association's effort was focused on safeguarding clean water funding by fighting proposed cuts to the Clean Water State Revolving Fund (CWSRF).

In January, the 112th Congress convened and immediately tackled the unfinished business from the previous Congress to fund the federal government for the remainder of the 2011 Fiscal Year (FY). With many new members elected to Congress, NACWA focused much of its early advocacy on ensuring their understanding of the Clean Water Act, the services NACWA members provide to their constituents, and the importance of continued federal investment in clean water infrastructure. In support of this effort, NACWA held a Congressional Briefing in February and conducted individual

outreach meetings with new Members of Congress.

Throughout the year, NACWA led coalitions of municipal water and wastewater associations, local and state government organizations, and conservation groups in urging Congress to maintain robust funding levels for the Clean and Safe Drinking SRF programs. As Congress wrapped up the FY11 spending package, NACWA saw some success as deep cuts to the programs were avoided and \$2.5 billion in funding was

maintained. As Congress undertook deliberations for the FY12 spending packages, NACWA helped secure the bi-partisan support of over thirty Senators for a “Dear Colleague” letter organized by Senator Barbara Boxer (D-CA), Senator James Inhofe (D-OK) and Senator Ben Cardin (D-MD) urging Senate appropriators to maintain robust funding for the SRF programs. As always, NACWA will continue to lead efforts to ensure that federal funding for wastewater infrastructure remains a priority for policymakers on Capitol Hill.



Stormwater & Wet Weather Issues

Wet Weather Overflow Issues

Continue as Central NACWA Focus

In addition to NACWA significant work over the past year on stormwater, the Association has also maintained a strong focus on advocacy issues related to combined sewer overflows (CSO) and sanitary sewer overflows (SSO). A key effort for NACWA has been working to pursue further clarification of the regulatory status of SSOs, including advocacy with the U.S. Environmental Protection Agency (EPA) to pursue some form of national SSO rule or policy. Additionally, NACWA has worked to expand the resources available to members on CSO and SSO concerns.

NACWA Urges EPA Action on Comprehensive SSO Rule

After conducting a series of 2010 listening sessions aimed at gathering input on the need for a comprehensive rule on SSOs and collection systems, EPA determined that it did not have the resources to pursue a SSO rule. NACWA continued to urge EPA to take action, and the Agency responded by conducting a two-day workshop on SSOs in July 2011, with NACWA and other key stakeholders participating in a facilitated discussion and an opportunity for public comment.

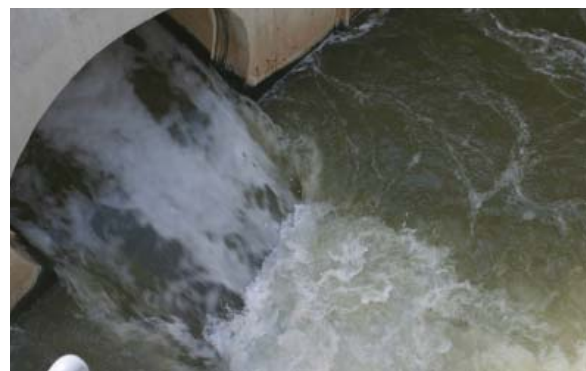
NACWA's SSO Workgroup held a series of calls and meetings in anticipation of the SSO workshop to finalize NACWA's positions on issues related to a rule. To develop as much consensus as possible NACWA met with the Natural Resources Defense Council (NRDC), American Rivers, and the Water Environment Federation (WEF) prior to the workshop. These productive discussions provided an important foundation not only for the workshop, but for continued cooperation on SSO rule issues.

During EPA's day-and-a-half workshop there was broad-based backing for a comprehensive SSO rule – in line with the Association's long-standing support for such an approach. NACWA's representatives for this critical discussion were Ben Horenstein, Manager of Environmental Services at the East Bay Municipal Utility District (Calif.) and Co-Chair of NACWA's Facility & Collection System Committee, and Lisa Hollander, Special Liaison for Legislative & Regulatory Affairs at the Northeast Ohio Regional Sewer District (Ohio) and Chair of NACWA's Legal Affairs Committee. The other participants in the facilitated discussion were the Water Environment Federation (WEF), American Rivers, the Natural Resources Defense Council (NRDC), Clean Water Action, the Cahaba River Society, the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA), and the League of Cities. The range of issues discussed at the meeting included monitoring/notification/reporting of SSOs, the need for a Capacity, Management, Operations and Maintenance

(C-MOM) approach, peak excess flow treatment/"blending", and the appropriate standard for allowable or excusable overflow events. A significant degree of agreement on these issues was found during the discussion, and the workshop concluded with all of the groups, including EPA, expressing an interest to continue working together on a comprehensive SSO rule. NACWA will continue to push EPA to focus on an SSO rule and make positive steps towards its development.

NACWA Expands Wet Weather Consent Decree Resources

One of NACWA's key roles in the wet weather arena is to provide its members with resources related to negotiation and implementation of combined sewer overflow (CSO) and sanitary sewer overflow (SSO) consent decrees. The Association was successful this year in adding another valuable tool in this important area. The Association's Consent Decree Implementation Survey was released in November 2010, in conjunction with NACWA's annual *Clean Water Law Seminar*, to provide another valuable resource for Association members dealing with consent decree issues.



The survey contains responses from over 25 communities across the nation currently under wet weather consent decree. It provides information on topics such as the cost of each community's decree; increases in utility rates under the decree; the major components of each decree; whether green infrastructure is included; how much overflow reduction will be achieved; and, many other topics. The survey itself provided an opportunity for NACWA members currently under consent decree to share information with each other regarding the implementation phase of their decrees – allowing utilities to learn from each other's experiences. It complements NACWA's existing consent decree resources available to member utilities regarding the negotiation phase of the process. NACWA continues to add survey responses from communities under consent decree. The survey is available to all NACWA members on the Legal Resources page of the Association's website.



NACWA Takes Lead on Stormwater Advocacy

NACWA continued its aggressive expansion into the stormwater arena over the past year, securing passage of a significant piece of legislation guaranteeing federal payment of municipal stormwater fees, representing the municipal utility perspective in crucial discussions with the U.S. Environmental Protection Agency (EPA) over the forthcoming national post-construction stormwater rule, and engaging in other regulatory developments impacting municipal separate storm sewer systems (MS4s). NACWA's strong advocacy efforts on stormwater issues have further cemented the Association's reputation as the leading national advocacy voice on behalf of municipal stormwater utilities.

NACWA Legislative Victory Requires Federal Payment of Stormwater Fees

NACWA ended the 111th Congressional Session with a key victory requiring federal agencies to pay local stormwater charges. The victory marked not only the culmination of a nearly year-long, focused effort to overturn a decision by the General Services Administration (GSA) that federal facilities located in the nation's capital are not responsible for paying municipal stormwater fees – but also important achievement in NACWA's years-long advocacy on this issue. The GSA decision asserted their position that the District of Columbia's fees were an unconstitutional tax levied by a local municipality on the federal government – and thus deprived the District of nearly \$3 million in funding for its stormwater mitigation programs. When GSA announced its decision, NACWA quickly got to work with the office of Senator Ben Cardin (D-MD), Chair of the Senate Water & Wildlife Subcommittee, and helped craft legislation to address the issue. The legislation clarifies that the Clean Water Act requires federal facilities to pay for reasonable, non-discriminatory charges levied by a municipality to support a municipality's stormwater mitigation program. The legislation passed by unanimous consent in both chambers in the final moments of the 111th Congress. NACWA was pleased to work with Senator Cardin, former Senator George Voinovich (R-OH), and Senator James Inhofe (R-OK), Ranking Member of the Senate Environment & Public Works Committee, to push through this bi-partisan legislation solving a significant issue for stormwater utilities.

Focus on Stormwater Regulatory Issues, Provides Key Municipal Perspective

In addition to work in Congress, NACWA has also actively engaged EPA on stormwater concerns. Central among NACWA's regulatory stormwater work has been engagement with EPA during development of the Agency's new stormwater rule. NACWA submitted formal written comments to the Agency numerous times regarding the rulemaking process, including

as part of a formal federalism consultation in December 2010, and met with senior EPA staff on multiple occasions to ensure that the municipal stormwater community's voice is being heard as the rule is developed. The new rule is likely to mark a paradigm shift in how urban stormwater is managed in the United States, with a focus on the use of green infrastructure and other low impact development techniques to retain a significant portion of stormwater runoff on-site. NACWA's engagement with EPA on this issue has emphasized that while the MS4 community is supportive of innovative approaches to better control urban wet weather flows, it is critical that the rule also be sensitive to the significant regulatory and economic stresses that municipalities all across the country are currently facing.

NACWA is particularly focused on minimizing the economic cost of the rule to clean water utilities at a time of economic hardship, especially those costs associated with a potential requirement that cities retrofit areas of existing impervious surface over a short period of time. NACWA's Stormwater Management Committee has played an important role in guiding the Association's efforts on the rule and will provide a valuable forum to discuss the rule's potential impacts on clean water utilities. The stormwater rule will be the most significant new clean water mandate to impact cities over the last decade, and NACWA is committed to continued aggressive advocacy on behalf of MS4s.

NACWA has been active on other stormwater regulatory issues over the past year, as well. Most notably, the Association reacted very strongly to a memo issued by EPA in November 2010 instructing MS4 permit writers to increase the use of numeric effluent limits in municipal stormwater permits. The memo, which was developed without any input or consultation from the regulated community, overturned long-standing EPA policy and could have imposed significant additional regulatory and economic burdens on MS4s to meet permit limits. NACWA responded by leading a municipal coalition including the National Association of Flood & Stormwater Management Agencies (NAFSMA) and the American Public Works Association (APWA) in sending a letter to EPA in January 2011 criticizing both the legal and procedural aspects of the November 2010 memo and demanding that the document be withdrawn. As a result, EPA agreed in March 2011 to provide an opportunity for public comment on the document and to consider revisions or withdrawal. EPA's decision to reconsider its actions regarding the memo demonstrates the important role NACWA plays in advocating on behalf of the nation's MS4 utilities. The Association looks forward to maintaining a strong national presence on stormwater issues in the coming year.

Watershed Management, Nutrients & Nonpoint Source Control

NACWA Continues to Advance Dialogue on Nutrients

Controlling nutrient-related water quality impacts was among the top environmental issues this year – and NACWA remained actively engaged to ensure the clean water community perspective was represented. From the Chesapeake Bay to the Gulf of Mexico to watersheds nationwide, the increasing impacts related to nutrient over-enrichment – and the lack of progress to date – are putting pressure on the states and U.S. Environmental Protection Agency (EPA) to come up with solutions. Much of the focus this year has been on the development of numeric nutrient criteria (NNC), the debate over whether they are needed for all waters, and the appropriate methods for developing and implementing meaningful criteria. NACWA's advocacy efforts continued to focus on ensuring that any point source controls result in a water quality benefits commensurate with the required investment – and that all sources are held accountable for their fair share of the nutrient load.

Nutrient Summit Provides Foundation for Ongoing Work

Building on its September 2010 *Nutrient Summit*, NACWA developed an issue paper outlining some of the major shortcomings of existing nutrient efforts and noting where improvements could be made. First and foremost, the issue paper underscored the importance of setting meaningful and achievable water quality goals – noting that EPA's insistence on independently applicable nitrogen and phosphorus values was inappropriate and may lead to wasted municipal resources. The paper lists a set of guiding principles for developing water quality criteria and highlights the need to evaluate the biological condition of local waters, in addition to monitoring pollutant levels. NACWA also listed several recommendations for improving implementation of criteria once developed, including better use of existing Clean Water Act (CWA) tools – like use attainability analyses and variances – to ensure requirements placed on municipalities are reasonable and sustainable.

Using the issue paper, NACWA initiated dialogues with senior EPA staff, with a focus on improving implementation once criteria are set. Few stakeholders debate that when meaningful criteria are developed many clean water agencies will have difficulty achieving the necessary levels of reduction with current technology. This discussion is in its infancy and will continue into the next year. NACWA also built on its existing relationship with the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA) to explore possible approaches where state regulators, regulated entities, and other interested parties could work together to develop a more collaborative approach to addressing nutrients. Recent

examples, including work in Wisconsin, have provided a model that may work in other states.

Key Pressure Points Provide Opportunities for Engagement

EPA continues to feel pressure on several fronts. Active petitions for rulemaking and other legal action from environmental non-governmental organizations (NGOs), including one petition seeking amendments to the secondary treatment definition to address nutrients, continue to serve as lever-

NACWA Defends Watershed Approach via Intervention in Chesapeake Bay Litigation
As part of NACWA's efforts to ensure that all dischargers within a watershed do their fair share to improve water quality, the Association moved to intervene in May 2011 in the American Farm Bureau, et al v EPA. The litigation involves a challenge to the final total maximum daily load (TMDL) developed by the U.S. Environmental Protection Agency (EPA) for the Chesapeake Bay. The case is being brought by a collection of agricultural interests attempting to remove themselves from the TMDL process, arguing that EPA has no authority to regulate or assign allocations to nonpoint agricultural sources. These claims present a significant threat to the comprehensive watershed approach upon which point source interests are highly dependent and which NACWA strongly supports – and could result in increased regulatory pressure on municipal wastewater and stormwater dischargers. For this reason, NACWA filed court papers to intervene in the litigation on the side of EPA to ensure that the interests of NACWA's public utility members are protected, and to ensure that EPA's ability address nonpoint sources and administer a holistic watershed approach through the TMDL program is upheld. NACWA's intervention seeks to protect clean water utilities from facing additional economic costs in meeting more stringent TMDL allocations if nonpoint sources are not held accountable, and to ensure that the cost of water quality improvements are shared equally throughout a watershed.

age for a more heavy-handed, EPA-led approach. NACWA weighed in on the secondary treatment issue and continues to track developments elsewhere, including the ongoing debate in the Chesapeake Bay. At the same time, EPA's action in Florida to promulgate federal NNC for that state has raised the ire of key Congressional leaders, resulting in pending legislation that would curtail EPA's role in several key CWA programs. NACWA continues to be a valuable resource for Congress and

NACWA Continues to Build Support for Watershed Approach

NACWA is continuing to build support for its vision of a holistic watershed approach to prioritize and address the most significant water quality impacts in ways that are cost-effective and environmentally-beneficial. The twelve Principles for a Viable Watershed Approach, based on the recommendations of NACWA's Strategic Watershed Task Force, have now been endorsed by six other organizations: the Natural Resources Defense Council (NRDC); the Association of State & Interstate Water Pollution Control Administrators (ASIWPCA); the Water Environment Federation (WEF); the Environmental Law & Policy Center; the National Wildlife Federation; and, the American Water Resources Association. NACWA is currently advancing the watershed approach through its Money Matters™ campaign and legislation on both the national and state levels, with emphasis on regulatory prioritization mirrored in the Principles – and the recommendations of the Strategic Watershed Task Force – as an essential part of a watershed approach.

testified in June on the Association's concerns regarding EPA's current approach. The Association also crafted a coalition letter on the NNC issue, urging EPA to better acknowledge the innovative approaches many states are developing to address nutrients.


Nutrient Advocacy Expands to the Courtroom

NACWA added a legal component to its advocacy on nutrient issues during the past year, entering litigation cases in Florida and Massachusetts that have the potential to set dangerous national precedent with regard to EPA's regulation of nutrient

under the Clean Water Act. NACWA's participation in these cases is part its ongoing efforts to directly engage EPA on nutrients issues that have the potential to directly impact on clean water agencies – and ensure that clean water utilities are not required to spend significant financial resources on nutrient removal with little or no resulting environmental benefit.

In April 2011, NACWA moved to participate in Florida Wildlife Federation v. EPA, which challenged numeric nutrient criteria developed by EPA for freshwater lakes, streams and rivers in Florida. NACWA entered the litigation both to support the Association's Florida members in their challenge to the final November 2010 criteria, and to present the national clean water utility perspective in a case that could have legal ramifications in other parts of the country. NACWA previously submitted comments on the criteria and the litigation provided an additional opportunity to weigh in on this critical issue and build upon previously comments on the criteria. In June 2011 NACWA filed a brief in the case questioning EPA authority to promulgate the nutrient limits and arguing that the Agency's actions in Florida are fundamentally inconsistent with the limited role provided in the Clean Water Act for federal involvement in establishing water quality standards. NACWA's brief further stated that EPA's development of nutrient criteria for Florida inappropriately seized the state's primary role in establishing the limits, and will also have significant national implications by setting a negative precedent for the potential federalization of nutrient water quality standards beyond Florida.

NACWA followed this litigation engagement by supporting Association member the Upper Blackstone Water Pollution Abatement District in a lawsuit appealing the nutrient limits in their National Pollutant Discharge Elimination System (NPDES) discharge permit. The case, filed in the U.S. Court of Appeals for the First Circuit in Boston, challenges both the flawed scientific methodology used by EPA to develop nutrient limits, as well as the timing of the limits included in the utility's permit. NACWA's role in the litigation reiterates the Association's long-standing position that the inclusion of nutrient limits in discharge permits must be based on sound science and a demonstrated link to water quality improvement. NACWA will also express significant concerns with EPA's requirement for Upper Blackstone to spend an additional \$200 million on nutrient upgrades before an initial upgrade project of \$180 million was completed, or its reduction in nutrient loadings achieved. This serves as a perfect example of the need for better regulatory prioritization. Consistent with the Association's ongoing Money Matters™ campaign, NACWA's participation in the litigation stresses the importance of allowing clean water agencies to make smarter investments for maximum environmental benefit with limited municipal resources. NACWA will



continue to maintain an active presence in these two cases over the coming year and stands ready to further expand its presence in the nation's courtrooms to defend its members and the clean water community from unreasonable nutrient regulations.

Control of Nutrients Pursued as Part of Farm Bill Reauthorization

Along with regulatory and legal advocacy efforts, NACWA is leading a legislative advocacy campaign to address run-off from agricultural lands – the dominant source of nutrients in most impaired watersheds. The Association began this effort in December when it convened a broad coalition of stakeholders that included the municipal water and wastewater community, state water pollution control agencies, and conservation organizations interested in strengthening the links between national agricultural policy and water quality improvement. The coalition sent a letter to Congress in February, signed by over 140 organizations, urging them to take action in support of improved water quality when reauthorizing the Farm Bill in 2012. This effort was followed by a series of factsheets raising awareness of the water quality challenges posed by nutrient run-off and the degree to which agricultural sources contribute to the problem.

NACWA's efforts got a welcomed boost from the Turner Foundation which provided the Association with a grant to support its efforts. The Turner Foundation was particularly interested in raising the perspective of the municipal water community in the debate over the need to reduce nutrient run-off from agricultural operations. NACWA was pleased to receive the grant to support a white paper examining the urban perspective on agricultural nutrient run-off, and the development of a long-term advocacy strategy to make progress on this issue through national policy. NACWA is busy working with its Nutrient Workgroup, and members of a broader stakeholder coalition, to develop policy recommendations for Congress to consider as it drafts this next authorization of the Farm Bill. The Association is also pulling together key background information about nutrient-related water quality impacts experienced by each state to inform the debate on this issue. NACWA was also invited to participate in a Future 500 dialogue hosted by the Johnson Foundation to discuss how to strengthen the links between water and agricultural policy. Dialogue was attended by key stakeholder organizations representing agricultural, conservation and business interests.



Biosolids Management, Energy Recovery & Air Emissions

NACWA Works Aggressively to Preserve Biosolids Incineration as Viable Management Option

This past year NACWA's engagement in the biosolids arena continued to focus on maintaining management options and preserving local choice. While prior emphasis and interest has focused largely on land application, this year saw incineration move to the top of the list of 'most-threatened' biosolids management options. A cascading series of lawsuits has left sewage sludge incinerators (SSIs) facing a set of stringent Clean Air Act (CAA) maximum achievable control technology (MACT) standards – and the use of biosolids as a fuel in other combustion units has been called into question. NACWA maintained active efforts on the regulatory, legal and legislative fronts to address these major challenges to biosolids management.

Significant Victory Scored on Cost Impacts of SSI Standards

Continuing work it began in 2009, NACWA maintained an aggressive presence with staff at the U.S. Environmental Protection Agency (EPA) responsible for drafting the CAA SSI rule – providing information about the industry and helping to shape the final regulations wherever and whenever possible. In the run up to the proposal of the SSI rule in October 2010, the Association met with key EPA staff, including the Assistant Administrator for the Agency's air office, as well as the White House's Office of Management & Budget.

With the release of the proposed standards – including a mercury limit that alone would have imposed billions of dollars of costs on SSIs – NACWA requested, and ultimately participated in, a public hearing on the rule. At the hearing the Association underscored several fundamental flaws in the proposal, including EPA's cost estimates for the mercury limit. The Association urged the Agency to pursue regulation under a different section of the CAA, allowing for additional flexibility when setting control standards. NACWA provided over 500 pages of comments and additional information to the Agency. The comments of the Association and its Member Agencies on the proposed SSI rule were successful in convincing EPA that a 'beyond the MACT floor' level of control for mercury was not justified, resulting in avoided costs of more than \$1 billion for clean water agencies operating SSIs. Despite significant improvements, the final rule still contained fundamental flaws. As a result, NACWA petitioned EPA to reconsider and stay the proposed SSI rule, citing the Agency's lack of legal authority, its failure to collect sufficient information to develop lawful MACT standards, and its failure to consider the variability of pollutant concentrations in sewage sludge fed to SSIs, among other issues.

NACWA also actively engaged EPA on its development of the related definition of non-hazardous solid waste rule. The rule, which provides the regulatory underpinnings for the SSI MACT rule, defines sewage sludge destined for combustion as a solid waste. NACWA's regulatory advocacy was successful in limiting the scope of EPA's determination to combustion, thereby minimizing any implications for land application, but the final rule continued to define all sewage sludge that is combusted as a solid waste – a conclusion that has implications for both SSIs and utilities burning or offering sludge as a fuel.

NACWA Challenge EPA Incineration, Solid Waste Rules in Court

In addition to filing the administrative petition for reconsideration on the SSI rule, NACWA also initiated the largest single litigation effort in the Association's history to protect its members, and the clean water utility community as a whole,

NACWA Remains Active with EPA on Other Biosolids Management Options

While EPA's biosolids program was fairly inactive over the past year, work at the Agency continues on evaluating the data from its Targeted National Sewage Sludge Survey. NACWA has remained engaged with EPA as it continues to evaluate the data from the survey and conduct risk characterizations to determine whether additional pollutants in land applied biosolids require regulation. This work is ongoing, but NACWA anticipates that EPA will provide additional details on its plans in the coming year.

from the final rule and the related definition of non-hazardous solid waste. While NACWA's legal strategy compliments the Association's successful regulatory advocacy efforts on the SSI issue, it also marks the maturation of the Association's legal advocacy program and demonstrates the willingness of the Association to take on EPA as a lead plaintiff in federal court in defense of its members' interests.

Central to NACWA's efforts is its legal challenge to the final SSI rule, which was initiated in May 2011 when the Association filed a legal Petition for Review of the rule in the U.S. Court of Appeals for the District of Columbia Circuit. The case, NACWA v. EPA, focuses on the legal and technical flaws in the SSI rule, including the fact that EPA choose to regulate



SSIs under the incorrect section of the Clean Air Act (CAA) and that EPA used incomplete and flawed data to establish SSI emissions limits in the final rule. NACWA will ask the court in its lawsuit to vacate EPA's final SSI regulations and order the Agency to develop new emissions limits for SSIs under the appropriate section of the CAA that allows for cost considerations to be taken into account. Many of the arguments that NACWA will make to the court will be similar to the arguments outlined in the Association's administrative petition for reconsideration of the SSI rule filed with EPA. In addition to filing its own challenge to the SSI rule, NACWA has also intervened in a number of related challenges filed by environmental activist groups to the rule to ensure that the interests of the Association and its members are protected. Additionally, NACWA plans to request that the court issue a judicial stay of the final SSI rule to protect Association SSI members from making unnecessary capital expenditures to upgrade their SSI units while the court challenge is pending. NACWA anticipates substantive briefing in the case to occur during fall 2011, with the court issuing a decision in spring or summer 2012.

In addition to the SSI rule challenge, NACWA also filed a challenge in May 2011 to EPA's final definition of solid waste rule. The solid waste rule provides a critical regulatory foundation for the SSI rule by defining any biosolids that are incinerated as a non-hazardous solid waste. NACWA's lawsuit challenges that determination and argues that Congress never intended for biosolids to be treated as a solid waste under federal solid waste or clean water laws. NACWA is also concerned about the solid waste rule's potential impacts on other forms of biosolids management, as well as certain wastewater treatment plant operations. The litigation provides an important opportunity to address those issues and protect all clean water agencies from additional regulatory and economic burdens as a result of the EPA's solid waste determination. The litigation schedule for the solid waste rule is expected to follow that of the SSI rule, with briefing occurring in fall 2011 and a decision from the court in 2012.

All of NACWA's legal SSI advocacy efforts are being supported by the Association's Sewage Sludge Incineration Advocacy Coalition (SSIAC), formed in March 2011. All municipal clean water utilities that operated SSI units, including both NACWA members and nonmembers, were invited to join the SSIAC, and over 40 utilities from around the nation have become coalition members. NACWA is grateful to all SSIAC members for their support and looks forward to growing the coalition even more over the coming year.

NACWA Pursues Legislative Strategy to Urge EPA to Abandon SSI Rule

At the same time as NACWA pursues relief in court, the Association is also pursuing support within Congress to address what it considers to be EPA's overreach in promulgating rules for SSIs under the wrong section of the CAA. NACWA received support for its efforts from Senator James Inhofe (R-OK), Ranking Member of the Senate Environment & Public Works Committee, who sent a letter in December to EPA urging them to reissue hazardous air emission standards for SSIs under the more appropriate section of the CAA. NACWA continues to pursue support in Congress for its efforts and is considering legislation to overturn EPA's decision. The Association's primary legislative strategy dovetails its legal strategy informing Congress that EPA exceeded its legal authority established by the Clean Water Act which clearly requires that the disposal of sewage sludge be regulated according to CWA §405; ignored clear language Congress included in the Solid Waste Disposal Act (SWDA) establishing the domestic sewage exclusion; and violated the specific requirements of the Clean Air Act (CAA) which specifically provide for regulation of any hazardous air emission standards from Publicly-Owned Treatment Works under §112 of that Act. NACWA anticipates broad bi-partisan support in Congress for these efforts.

Energy and Climate Issues Continue on NACWA's Advocacy Agenda

Although Congress was not able to enact comprehensive climate and energy legislation, the nation's capital did move forward on greenhouse gas reductions on the regulatory front within the framework of the Clean Air Act (CAA).

Advocacy on Greenhouse Gas Emissions Benefits Utilities

As the U.S. Environmental Protection Agency's (EPA) greenhouse gas (GHG) Tailoring Rule continues to incrementally bring facilities into the Clean Air Act (CAA) Title V and Prevention of Significant Deterioration (PSD) permitting programs, NACWA's advocacy on biogenic emissions has benefited utilities by significantly reducing the amount of emissions that are counted towards the permitting thresholds of these programs. The Tailoring Rule went into effect at the beginning of 2011, but it did not address how biogenic emissions should be treated under the rule. Biogenic GHGs are usually considered part of the natural carbon cycle and are exempt from all major regulatory and policy programs, including the Intergovernmental Panel on Climate Change (IPCC) and California's cap-and-trade program.

EPA proposed a rule in March 2011 to defer biogenic emissions from CAA programs for three years while it continues to

study the issue. The deferral applied only to carbon dioxide emissions, and not to methane or nitrous oxide emissions resulting from the combustion of biomass or biogas. The proposal specifically deferred emissions from combustion of biogas and biosolids resulting from the wastewater treatment process. NACWA participated in a public hearing and submitted written comments on the proposal, emphasizing the environmental benefits of utilizing biogas and biosolids for generating heat and electricity, which can reduce and – in some cases – even eliminate utility reliance on fossil fuels and the power derived from them. NACWA also asked EPA to explicitly defer biogenic emissions from other wastewater treatment processes, since sewage must be treated and utilities should not be penalized for their role in protecting human health and the environment.

In response to NACWA's comments, the final rule contained specific exemptions for carbon dioxide emissions from wastewater treatment processes, as well as the combustion of biogas and biosolids. As a result, it is unlikely that any wastewater utilities will fall under the Title V and PSD permitting requirements for GHGs during the next three years.

EPA will study biogenic emissions over the next three years to determine if this exemption should be made permanent, and is forming a Science Advisory Board (SAB) expert panel to study the issue. NACWA nominated the only wastewater expert to make the EPA "short list" for the panel. The Association wrote a letter urging EPA to include this expert on the panel, making the case that wastewater utilities are an important component of the biogenic emission deferral and the panel needs an expert that understands wastewater treatment processes.

NACWA's advocacy work GHGs also included analyzing EPA's annual Inventory of U.S. Greenhouse Gas Emissions and Sinks and submitting comments on the wastewater treatment emissions calculations. NACWA believes that EPA's calculation methods are inaccurate, and the Association will continue to work with the Agency and the IPCC to try more accurately characterize wastewater GHG emissions.

NACWA's Legislative Work Continues on Climate and Energy Issues

While it is doubtful that the 112th Congress will address climate and energy issues in any meaningful way, NACWA is ready when it does. In March, the Association submitted comments to the Senate Energy & Natural Resources Committee on what issues should be addressed if and when legislation is drafted to establish a Clean Energy Standard (CES) – and urged the Committee to ensure that biogas and solids generated at municipal wastewater treatment plants are included

in a CES. NACWA submitted these comments jointly with the California Association of Sanitation Agencies (CASA). The Association has also continued its collaboration with the Association of Metropolitan Water Agencies (AMWA), American Rivers and other water associations to urge Congress to address climate adaptation issues facing wastewater, drinking water and stormwater agencies. NACWA expects legislation to be reintroduced this year by Congresswoman Lois Capps (D-CA) and Senator Harry Reid (D-NV) that would authorize a grant financing program to help ensure community resiliency and sustainability as climate-related changes occur that impacts water resource agencies.



Expansion of Judicial Advocacy – An Overview

NACWA Expands Legal Advocacy Footprint, Raises Profile in Nation's Courts

The past year has seen an expansion of NACWA's judicial advocacy efforts as the Association increased its litigation portfolio and heightened its presence in the nation's courtrooms to protect its member's interests. NACWA's growing legal involvement has focused on many of the Association's key issues including nutrients, biosolids management, nonpoint source control, and stormwater – and has taken a variety of forms including intervention, amicus curiae briefs, and initiating litigation as the lead party. Aggressive legal advocacy plays a critical role in bolstering NACWA's efforts to defend its members against unreasonable or illegal regulatory requirements and their associated economic burdens, and the Association is committed to maintaining a robust presence in legal matters that impact the municipal clean water community.

NACWA engaged in five new litigation matters this year. Central among these cases was the Association's efforts to be the lead party in challenging EPA's final sewage sludge incineration (SSI) regulations, demonstrating the Association's ability to take the legal fight to the U.S. Environmental Protection Agency (EPA) on matters that will have significant legal and economic impacts on its members. NACWA also displayed a willingness to fight agricultural and nonpoint source interests in the courtroom by intervening in a lawsuit over EPA's total maximum daily load (TMDL) for the Chesapeake Bay, seeking

to prevent agricultural interests from abandoning the TMDL process and leaving municipal wastewater and stormwater dischargers responsible for costly water quality improvements. Nutrients have taken a leading role in the Association's legal efforts as well, with NACWA participating in litigation in both Florida and Massachusetts to push back against the imposition of illegal and scientifically flawed nutrient regulations on the municipal clean water community. Stormwater issues have also drawn NACWA's attention with the Association making strong legal arguments against EPA's efforts to include numeric effluent limits in municipal stormwater permits, as well as supporting member agency interests to ensure that stormwater utility charges are treated as valid fees for service and not illegal taxes.

As EPA continues forward with an increasingly aggressive regulatory agenda, NACWA's legal and judicial advocacy efforts will play a critical role in defending the interests of the municipal utility community in courtrooms all across the country. Additional information on all of NACWA's litigation activity over the past year is available in more detail throughout this Year in Review, as well as in the Litigation Tracking section of the Association's website at www.nacwa.org. NACWA stands ready to continue being the voice of its members in the nation's courts.



Member Agency & Association Achievements

Visionary Leadership

NACWA's Officers and Board Members devote countless volunteer hours to overseeing the affairs of the Association and establishing and implementing a shared vision for its future. With the strategic direction of the Association firmly established in a 2010 update of the Association's Strategic Plan, NACWA's leadership looked toward the future in 2010-2011. NACWA would like to thank the member representatives who have taken time to help forward the needs of the Association community through their work as Board Members and Standing Committee Leaders.

NACWA Awards – Recognizing Excellence

Acknowledging leadership in innovation, environmental stewardship and effective utility management, NACWA award programs strive to validate and inspire the clean water community by celebrating the accomplishments of its members. NACWA's three award programs honor both individuals and public agencies for their commitment to creating clean and safe waters and a healthy sustainable environment.

Excellence in Environmental Achievement

NACWA's National Environmental Achievement Awards recognize individuals and agencies that have made extraordinary contributions to water quality and the environment. This year NACWA celebrated 16 federal, state, and local level officials who made a significant impact in the country's legislation and their community's environmental quality. In addition to individual honorees, the National Environmental Achievement

Awards program honors member agencies that have exhibited a combination of creativity and environmental accountability in the categories of research and technology, operations, and public information and education. Fourteen agencies earned this distinction award by pioneering new initiatives and technologies that bettered the environment.

Excellence in NPDES Compliance

Recognizing the commitment of NACWA members to perfection in wastewater treatment, the Peak Performance Awards Program recognizes member agency facilities for their excellence in compliance with their National Pollutant Discharge Elimination System (NPDES) permit requirements. This year, over 441 member agency facilities were recognized with awards for complete or near complete compliance.

Excellence in Utility Management

The Excellence in Management Recognition Program celebrates NACWA member agencies that have implemented and sustained successful programs that address the range of management challenges faced by public clean water utilities in today's competitive environment. Five agencies were recognized for their exceptional achievements in utility management this year.



NACWA's 2010-2011 Officers included (from left to right) NACWA Vice President, David Williams, Director of Wastewater, East Bay Municipal Utility District, Calif.; Jeff Theerman, NACWA President and Executive Director for the Metropolitan St. Louis Sewer District, Mo.; Government Relations Specialist for JEA (Electric, Water & Sewer) in Florida, and Treasurer, Suzanne Goss; and NACWA Secretary, Julius Ciaccia, Executive Director of Northeast Ohio Regional Sewer District, Ohio.



A Clear Commitment to America's Waters
National Association of Clean Water Agencies
1816 Jefferson Place, NW
Washington, DC 20036
P 202.833.2672 F 202.833.4657
www.nacwa.org