

CLEAN WATER ADVOCATE

Nancy Stoner, U.S. EPA Acting Assistant Administrator for Water, will be a featured speaker, along with other high ranking Agency officials, on October 8 at the Hot Topics Breakfast – part of the NACWA – Water Environment Federation presented Utility Leaders Morning at WEFTEC13.



A Clear Commitment to America's Waters



AUGUST/SEPTEMBER 2013

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NACWA Instrumental in Legal Victory Supporting Watershed Approach

NACWA and the municipal clean water community achieved a significant legal victory on September 13 when a federal district court upheld the U.S. Environmental Protection Agency's (EPA) final total maximum daily load (TMDL) for the Chesapeake Bay – and its holistic watershed approach requiring pollution reduction from all sources of impairment. The decision marks a significant win for NACWA, its members, and its municipal partners by affirming EPA's ability to pursue a watershed approach under the Clean Water Act (CWA) – including a meaningful contribution from nonpoint agricultural sources – in crafting TMDLs to achieve improved water quality.

The court's comprehensive 99-page ruling provides a resounding endorsement of EPA's efforts in developing the Chesapeake Bay TMDL, including its use of a watershed approach to require meaningful reductions from all sources of water quality impairment. Specifically, the court stated that it "endorses the holistic, watershed approach used here," noting that such an approach "receives ample support in the CWA, its legislative history,

and Supreme Court precedent." The court went on to note EPA's decision to pursue a watershed approach in the final TMDL was "consistent with the CWA, and practical in terms of attaining a full and fair contribution by all major source sectors."



Water Quality Trading Part of Targeted Pollution Reductions

The ruling also contains some very positive language on water quality trading that can support the legal basis for trading programs under the CWA, both within the Chesapeake Bay and nationwide. As part of the discussion about existing flexibilities under the Bay TMDL, the court spe-

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National Law Seminar to Address Cutting-Edge Issues

Registration is now available for NACWA's 2013 *National Clean Water Seminar*, with an agenda that promises to deliver an engaging and timely analysis of critical legal topics directly affecting the operations of municipal clean water utilities. Scheduled for November 20 - 22 in San Antonio, Texas, the Seminar will feature the nation's top clean water attorneys and provide an excellent opportunity to network with leading professionals. Continuing Legal Education (CLE) credits, including ethics credits, will be offered.

Integrated Planning, Legal Advocacy to be Examined

A panel discussion, *Integrated Planning – Where Are We & Where Are We*

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NACWA – Active & Engaged at WEFTEC’13

NACWA, its leadership, and members will have a prominent presence at WEFTEC’13 – co-hosting sessions, engaging in focus groups, and providing invaluable information and perspectives from the municipal clean water community.

Significant EPA Presence at Hot Topics Breakfast

The Association will again collaborate with Water Environment Federation (WEF) to convene the *Utility Leaders Morning* on Tuesday, October 8. The morning’s events include the annual *Hot Topics Breakfast* from 8:00 - 9:45 am. The U.S. Environmental Protection Agency’s (EPA) Acting Assistant Administrator for Water, Nancy Stoner; Andrew Sawyers, Director of the Agency’s Office of Wastewater Management (OWM); Jeff Lape, Deputy Director for the Office of Science & Technology; Deborah Nagle, Director of OWM’s Water Permits Division; Loren Denton, Chief of the Office of Enforcement & Compliance Assurance’s (OECA) Municipal Enforcement Branch and John Dombrowski, Director of OECA’s Enforcement Targeting & Data Division will be on hand along with other key Agency staff to discuss issues including integrated planning, nutrients, and water quality standards, to name a few. There is no fee for the *Hot Topics Breakfast*, but [registration](#) is requested.



A *Utility Executives Forum*, from 10:00 am-12:00 noon, follows the *Hot Topics Breakfast* and will feature Kimo Kippen, Chief Learning Officer, Hilton Worldwide. Kippen will keynote the *Forum* describing how Hilton Worldwide reinvented itself and how utilities can learn from this global organization.

Collaboration is Key

NACWA will also collaborate with WEF, and the Water Environment Research Foundation (WERF) on several events, including a utility focus group that will discuss and identify the attributes and skills needed for the workforce of the future. NACWA leadership will join leaders from other water sector associations for a WEF-hosted discussion and exploration of enhanced collaboration to provide added value to members – as well as a meeting with the Chief Executive of the Singapore Utilities Board, Chew Men Leong. Additionally, the Association’s Executive Director, Ken Kirk, will receive WEF’s *Honorary Membership Award* and NACWA staff members will speak at sessions throughout WEFTEC’13. NACWA’s collaboration with WEF and WERF won’t end with WEFTEC’13 – the organizations will again join forces April 7-9 in Washington, DC for the *National Water Policy Forum & Fly-In*, the seminal event of *Water Week 2104*. ♦

New EPA Ammonia Criteria to Impact Utilities Nationwide

While most estimates of the impacts of the U.S. Environmental Protection Agency’s (EPA) revised [ammonia criteria](#) are merely educated guesses, everyone agrees that the impacts will be widespread and significant among the clean water community. More treatment plants will be required to remove ammonia, with only those plants with very high dilution allowances and low background levels likely to remain unregulated. Those plants currently treating to remove ammonia may need significant upgrades to meet permit limits based on the revised criteria, and removal of ammonia to the lower levels that will be required will be particularly problematic during the colder winter months. Recognizing these potential impacts, NACWA has been actively engaged since EPA began its efforts to revise the criteria back in 2004, meeting with EPA on several occasions, providing comments and scientific information, and participating in peer review efforts. One of NACWA’s top concerns was ensuring that the clean water community and state permit writers had sufficient guidance on implementing the criteria. The Association’s concerns regarding implementation were reinforced by officials in EPA’s Office of Wastewater Management and the release of the criteria revisions was delayed in order to complete several implementation guidance documents.

New Criteria Significantly More Stringent

The revised ammonia criteria were released in final form on August 22. Based on ammonia’s impacts on freshwater mussels and snails, the new criteria values are significantly more stringent than the existing criteria. When EPA published its draft criteria revisions for ammonia in 2009, the Agency proposed using a bifurcated approach, with different criteria values for waters where mussels were present and absent. Subsequent to 2009, however, the Agency reviewed additional studies confirming that gill-breathing snails were similarly sensitive to ammonia. In finalizing the criteria, EPA included only one acute and one chronic value (expressed as an equation that is dependent on temperature and pH), which will apply to all waters regardless of what aquatic species are present. Though EPA eliminated the dual criteria approach, the Agency does provide guidance and information to facilitate the development of site-specific criteria using a recalculation procedure to better account for the organisms that reside at a particular site.

Implementation Flexibilities Cited in Guidance Documents

Consistent with NACWA’s recommendation, EPA published several supporting guidance documents, along with the criteria

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Water Resources Utility of the Future Initiative Gathers Momentum

The Water Resources Utility of the Future (UOTF) initiative, set in motion by NACWA, the Water Environment Research Foundation (WERF) and the Water Environment Federation (WEF), has been gathering some significant momentum on a number of key fronts.

New House Caucus to Focus on Technology & Innovation

In line with recommendations carried forward in NACWA's [Water Resources Utility of the Future ... A Call for Federal Action](#), a written request from Representatives John Duncan (R-TN) and Tim Bishop (D-NY), has been sent to the House Administration Office seeking the creation of a Clean Water Caucus whose mission will be to identify and spotlight new innovations, technologies and approaches that can advance the objective of the UOTF initiative. Upon the imminent approval of the request by the House Administration Office, NACWA and other key stakeholders will be working to grow the membership of the Caucus. Also planned are several annual briefings that focus both on key technological advances, and potential ways Congress can incentivize greater penetration for innovation throughout the water sector.

New TIRRF Would Target Funds

NACWA has also begun to vet a new proposal with its members to establish a Technology Innovation & Resource Recovery Fund (TIRRF). The TIRRF would target funds distributed under the Clean Water State Revolving Fund (CWSRF) toward investments by clean water utilities that promote UOTF-style innovation and resource recovery. The Fund would expand the current set aside within the CWSRF, known as the Green Project Reserve (GPR), to include projects and activities that promote the use of innovative technology to transform the way clean water utilities deliver clean water services and engage in resource recovery. Under the current GPR, the CWSRF designates 20% of its funds for green infrastructure and/or energy efficiency projects. NACWA's proposed TIRRF would increase the set-aside to 30% of all CWSRF funds and expand the list of eligible projects to include innovative stormwater control measures; water reclamation and reuse; energy generation

and conservation; nutrient reduction and recovery; and, watershed restoration and improvement.

Establishing a TIRRF would ensure that in addition to supporting traditional infrastructure projects, the CWSRF promotes the adoption of 21st century technology to transform clean water utilities into advanced resource recovery agencies that can efficiently deliver improved environmental and economic benefits to their communi-

ties. NACWA intends to begin outreach with members of the Congress this fall to identify champions for this approach, and the new Clean Water Caucus will be helpful as a potential sounding board for this effort.

Conservation, Energy Efficiency & Renewable Fuel Also Receive Attention

The UOTF initiative also served as a strong reference point throughout an August 21-23 dialogue convened by The Johnson Foundation in Racine, Wis. on

Building Resilient Utilities: How Can Water and Electric Utilities Co-Create their Future? Participants included representatives from NACWA member utilities East Bay Municipal Utility District, Calif.; D.C. Water; the City of Vancouver, Wash.; Camden County Municipal Utilities Authority, N.J.; and the Austin Water Utility, Texas. Discussions at the meeting focused on how wastewater, drinking water, and electric power utilities could find mutually beneficial solutions to protect environmental resources through water conservation, energy efficiency, and increased renewable fuel production. A report will be released soon, detailing strategies, incentives, and potential actions that could advance cross-sector collaboration.

NACWA is also working with WEF and WERF to promote the energy potential of wastewater treatment utilities. The associations are jointly funding a WERF Targeted Collaborative Research project to quantify the potential for renewable energy from wastewater-derived sources nationwide, along with the capital costs to convert public utilities to sources of renewable energy. The project will be completed by the end of October, and NACWA will use the results in its advocacy work with the Department of Energy (DOE) and the U.S. Environmental Protection Agency (EPA). 💧

Ammonia Criteria

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values to assist states in both the adoption of the new recommended criteria into their water quality standards – and the development of alternative, site-specific criteria, where appropriate. One document in particular, [Flexibilities for States Applying EPA's Ammonia Criteria Recommendations](#), highlights the flexibility states have in

implementing the criteria – addressing variances, designated use changes, and dilution allowances – that will hopefully alleviate some of the impacts on the clean water community. NACWA will work closely with its Member Agencies, and EPA, as implementation proceeds. 💧



NACWA Secures Partial Remand of SSI Rule

NACWA obtained a limited legal victory on Aug. 20 when the U.S. Court of Appeals for the District of Columbia Circuit issued a [decision](#) remanding portions of the U.S. Environmental Protection Agency's (EPA) controversial sewage sludge incineration (SSI) rule back to the Agency for additional work. The ruling caps a two-and-a-half-year legal effort led by NACWA to push back on the SSI rule and secure more environmentally and economically appropriate emission limits for SSI units.

Lack of Technical Justifications Cited

Although the court did not agree with all of NACWA's arguments, it did side with the Association in finding that EPA failed to provide proper technical justifications and explanations for how emission limits were set. The decision also reaffirms a broader principle that EPA rules and regulations must be based on sound science and data.

NACWA served as lead plaintiff in the case and set forth two main challenges to the rule: 1) a challenge to EPA's statutory authority for promulgating the rule, and 2) a challenge to EPA's technical basis for the emission standards in the final rule. In the decision, the court sided with EPA on the statutory argument, but sided with NACWA on the majority of the technical arguments. The court further remanded a number of technical issues back to EPA for additional consideration.

EPA to Develop Revised Rule

The court remand of technical issues to EPA will prove to be valuable to NACWA and its members, both in the context of the SSI

TMDL Case

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cifically noted the role of trading in achieving the targeted pollution reductions. The court noted that "individual sources are free to trade pollution amounts without the need to revise or adjust the TMDL allocations." This acknowledgement of trading within a CWA program is among the first of its kind in federal case law and can be helpful in defending trading programs from legal challenge, including a separate currently pending federal case attacking the Bay TMDL's trading program, in which NACWA has intervened.

Nutrient Allocations Protected

For NACWA members within the Chesapeake Bay watershed, this ruling protects the TMDL nutrient allocations that have already been assigned to municipal point sources and removes the risk of even higher nutrient removal requirements in the event of the loss of the watershed approach. This allows utilities within the Bay watershed to proceed with their existing TMDL implementation plans. For NACWA members outside the Chesapeake Bay region, this decision

rule – but also more broadly in terms of the Agency's future rule-making efforts. As a result of the remand, EPA must develop a revised rule with better scientific justifications. This will provide NACWA with an additional opportunity to advocate for a change in the rule's emission limits.



On a broader level, the decision affirms NACWA's long-standing position that all environmental regulations must go through a thorough, deliberative and transparent process to ensure that they are based on valid data, science and economic principles. The decision to remand key portions of the SSI rule also sends a clear and unequivocal message to EPA that the rulemaking process cannot be circumvented.

NACWA's participation in the case was funded by voluntary contributions from members with SSIs who came together as part of the Association's Sewage Sludge Incinerator Advocacy Coalition (SSIAC). NACWA is extremely grateful to the SSIAC for its support and looks forward to working with its member utilities and EPA to move forward to achieve a rule that is both scientifically-based and technically-sound – and does not impose unnecessary costs on utilities and their local ratepayers at a time when they are already struggling to meet existing regulatory and financial obligations. Additional information on the case can be found on NACWA's [Litigation Tracking webpage](#).

provides key legal backing for a holistic watershed approach and can serve as valuable legal precedent to support similar approaches elsewhere in the country.

NACWA, the Maryland Association of Municipal Wastewater Agencies (MAMWA), and the Virginia Association of Municipal Wastewater Agencies (VAMWA) jointly intervened as defendants in the litigation in October 2011 to represent the municipal clean water community – and to ensure that EPA's ability to address nonpoint sources and administer a holistic watershed approach through the TMDL program was upheld. NACWA is very pleased with the court's ruling, and appreciates the opportunity to work with MAMWA and VAMWA in achieving this outcome. Additional information on the case and NACWA's involvement is available on the Association's [Litigation Tracking webpage](#).

NACWA Welcomes Two New Affiliate Members

NACWA is pleased to welcome two new Corporate Affiliate members to the Association.

In the coming fiscal year NACWA is committed to enhancing the value its members receive from their membership and encourages members

Abengoa Water USA

Represented by Francesca McCann, Chief Executive Officer

With more than 70 years of experience, Abengoa is a leading company around the world for water-related engineering projects. Abengoa designs and constructs water infrastructures and facilities, especially desalination and water treatment plants, and water distribution and transport infrastructures.

EmNet, LLC

Represented by Tim Braun, Enterprise Architect

EmNet's Real Time Intelligence and Optimization technology helps utilities maximize existing and planned resources to minimize overflows and save money. EmNet combines the use of traditional hydraulic modeling and novel real time information technology to deliver actionable insight.

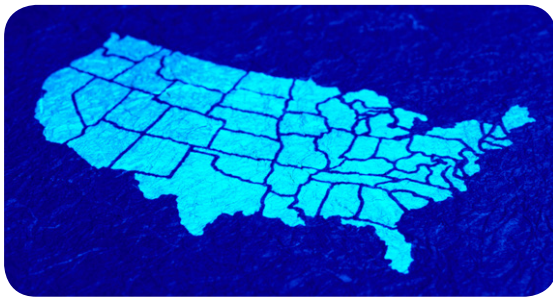
to increase their engagement in the Association through e-communications, participation on committees, and attendance at conferences.

It's easy to add additional staff to your membership, simply forward their name, title, and e-mail address to Christian Howard at choward@nacwa.org.

NACWA Takes Clean Water Message to State & Regional Meetings

NACWA is increasingly focused on bringing the clean water community's message on advocacy issues to state and regional meetings – as well as national conferences – across the country. The Association and several of its utility members have been featured on panels, participated in productive dialogues, and presented NACWA's priority issues at a number of these key meetings this summer.

- NACWA and several of its member agencies participated in *Building Resilient Utilities: How Can Water and Electric Utilities Co-Create their Future?*, a meeting convened by The Johnson Foundation to initiate a dialogue on how to cultivate greater collaboration between wastewater, drinking water, and electric power utilities aimed at finding mutually beneficial solutions.
- Adam Krantz, NACWA's Managing Director, Government & Public Affairs, presented at the Annual *Georgia Environmental Conference* in August— Georgia's largest conference focused exclusively on environmental issues. In his remarks, Krantz provided an overview of its legal, regulatory and legislative advocacy on nutrient-related issues and the Water Resources Utility of the Future initiative.
- A number of NACWA members and Association Executive Director, Ken Kirk, were featured at the Oregon Association of Clean Water Agencies' (ACWA) *Stormwater Summit & Annual Meeting* this summer. Tom Sigmund, Executive Director of Green Bay's NEW Water and Chair of the NACWA/WEF/WERF Water Resources Utility of the Future (UOTF) Task Force and NACWA's Utility Management Committee, brought the UOTF message forward in a presentation at the meeting, and George Hawkins, NACWA Board Member, Chair of the Association's Money Matters Task Force, and General Manger at DC Water, spoke about the need for a new Clean Water Act.
- NACWA Manager of Regulatory Affairs, Brenna Mannion, was featured on a panel at the American Public Works Association (APWA) 2013 *International Public Works Congress & Exposition* providing the clean water utility perspective on national storm-water rulemaking and trends.
- NACWA's General Counsel, Nathan Gardner-Andrews, was a featured speaker at the *Annual Conference* of the Kentucky Stormwater Association, providing an update on key national stormwater developments and trends.
- Several NACWA Officers and Board Members held a productive dialogue in August with the Board of Directors of the Association of Clean Water Administrators (ACWA), which represents the State, Interstate and Territorial officials who have the delegated authority to implement the Clean Water Act program. The discussion focused on affordability issues, funding and financing challenges, and ways to collaborate on integrated planning and Water Resources Utility of the Future initiatives.



Law Seminar

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Going?, will examine the U.S. Environmental Protection Agency's (EPA) Integrated Planning Framework – 18 months since its release. Clean water utilities all across the country are turning to the Framework as a way to pursue new flexibilities and prioritization in achieving legal Clean Water Act (CWA) mandates. While a number of utilities have successfully used an integrated planning approach within an enforcement and/or consent decree context, fewer have successfully pursued an integrated plan through a permitting framework. A diverse group of federal, state, and local clean water speakers will examine where integrated planning stands and how it may evolve in the future. The discussion will include legal lessons learned and how utilities can better leverage integrated planning through a permit-based approach.

Another informative panel discussion, *Successful Legal Advocacy with EPA – An Insider's Perspective*, will provide guidance on how to conduct effective advocacy at EPA and impact the Agency's legal decisions on key environmental and clean water issues. A number of former senior officials from EPA's general counsel,

program, enforcement, and regional offices will provide an inside look at how the Agency views key clean water legal issues, how decisions and policies are really made, and how clean water attorneys can best advocate to impact EPA deliberations. This session will be a must for any clean water utility attorney or manager that represents their agency before EPA.

Other *Seminar* topics include stormwater management; recent consent decree developments; how to negotiate key service agreements (such as construction contracts and union agreements); top Clean Water Act cases from the past year; and, evolving legal trends in wet weather enforcement and permitting.

Additional information on the *Seminar* is available on NACWA's [website](#), including an agenda, complete list of CLE offerings, and hotel and conference registration information. NACWA is pleased to convene this 'one of its kind' *Seminar* to address the wide array of legal issues impacting clean water attorneys and professionals. ♡

Water & Wastewater Leadership Center

Executive Education Designed Specifically for Utility Leaders

March 9 – 21, 2014

University of North Carolina Chapel Hill, Kenan Flagler Business School

Held through University of North Carolina Chapel Hill, Kenan Flagler Business School; the Water & Wastewater Leadership Center cultivates water sector leadership and management skills in an intensive 11-day executive management learning experience. Students are challenged to broaden their perspective on evolving issues facing utilities and the changing business environment, while key course elements provide instruction on how to think strategically and lead confidently.

Learn more by contacting Kelly Brocato, Leadership Center Program Manager at kbrocato@nacwa.org.

