

Targeted Action Fund – Key Project Highlights

Created to mark the Association's 25th anniversary, NACWA's Targeted Action Fund (TAF) has strengthened the Association's capability to achieve its short and long-term strategic objectives by funding critical research and analysis in support of our advocacy agenda.

Projects funded through the TAF are recommended or endorsed by the Association's Standing Committees, and subsequently approved by NACWA's Board of Directors. The following summary describes recent TAF projects and illustrates the significant value the fund delivers to both the Association's advocacy efforts and NACWA's members.

Complete descriptions of the projects listed can be found on [NACWA's website](#).

- **Intervention in Critical Nutrients Lawsuits**

NACWA is seeking intervention in two cases involving nutrients – *Natural Resources Defense Council v. EPA*, which demands an EPA response to a 2007 petition requesting that the Agency's secondary treatment regulations be changed to require nutrient removal; and *Gulf Restoration Network v. EPA*, which seeks federal numeric nutrient criteria for all necessary waters in the country, including the Mississippi River Basin – to aggressively defend the interests of the clean water community. The potential cost implications to NACWA members from these cases are astronomical, running into the hundreds of billions of dollars nationally.

- **Sewage Sludge Incinerators (SSI)/Solid Waste Definition**

NACWA developed comments in 2010 in response to a proposed rule defining biosolids destined for incineration as a solid waste and a proposed rule dictating Clean Air Act Maximum Achievable Control Technology (MACT) standards for biosolids incinerators. NACWA's comment efforts helped to reduce the overall stringency of some of the emissions limits in the final SSI rule and reduce the overall burden of the regulation.

- **Florida Nutrients Litigation**

NACWA helped to secure an important legal victory for the Association's Florida members in February 2012 when a federal court struck down key elements of controversial numeric nutrient criteria promulgated for the state. The decision could also have very positive impacts for other clean water utilities around the country.

- **Legal Defense of Stormwater Fee Amendment to Clean Water Act**

In order to help defend NACWA's critical 2010 legislative victory clarifying the responsibility of federal government facilities to pay municipal stormwater fees, NACWA is currently involved in two different federal cases supporting Association stormwater members. NACWA's participation in these cases is critical to ensure that stormwater utilities are able to collect unpaid stormwater charges from federal government agencies that were billed prior to 2011. One case involves NACWA member the City of Vancouver, Washington, and the second case involves Association member DeKalb County, Georgia.

- **Upper Blackstone Amicus Brief**

The Association filed an *amicus* brief in support of member agency the Upper Blackstone Water Pollution Abatement District (UBWPAD) in challenging a federally issued discharge permit containing inappropriate nutrient limits. In an important victory for UBWPAD and NACWA members, the federal appeals court hearing the case indicated strong concern before the arguments even began with the fact that EPA had failed to take into account new modeling data when establishing the nutrient limits in the permit, and suggested that the Agency would be on questionable legal ground if it sought to proceed with the case. The court recommended sending the matter to mediation, with directions that EPA must take into consideration new information on the performance of Upper Blackstone's treatment plant and new modeling data in setting nutrient limits.

- **Chesapeake Bay TMDL Case**

NACWA's participation in *American Farm Bureau v. EPA*, a challenge to EPA's final TMDL for the Chesapeake Bay, is critical to ensuring that clean water utilities both within the Chesapeake Bay watershed and nationwide are able to seek appropriate contributions from nonpoint source dischargers to address water quality impairment.

- **Summit on New Approaches to Addressing Nutrient Issues**

NACWA convened a Nutrient Summit to provide clean water agency representatives an opportunity to discuss the issue of nutrients and alternative approaches to addressing their water quality impacts. With input from key stakeholders, Summit participants explored options within the current boundaries of EPA's Clean Water Act (CWA) authority, including new approaches to developing water quality criteria for nutrients and innovative implementation mechanisms. The issue paper from the Summit has now been widely circulated and used to guide the Association's advocacy agenda.

- **San Jacinto River Authority WET Appeal**

NACWA won an important victory in July 2010 when the U.S. Environmental Appeal Board (EAB) released an opinion remanding a disputed wastewater permit back to EPA Region 6 and echoing concerns raised by NACWA about the inclusion of Whole Effluent Toxicity (WET) limits. The EAB concluded that the permit's administrative record lacked a complete analysis of how Region 6 applied the Texas water quality WET limitations to their permitting decision, and therefore remanded the permit provisions imposing the WET limits for further clarification.

- **2011 NACWA Financial Survey**

Published every three years, the Association's *Financial Survey (A National Survey of Municipal Wastewater Management Financing & Trends)* has consistently proven itself to be a valuable in-depth resource for NACWA member agencies as they evaluate financing options and consider rate adjustments.

- **Anacostia River Case**

NACWA participated in *Anacostia Riverkeeper v. U.S. Environmental Protection Agency (EPA)*, a total maximum daily load (TMDL) appeal pending in the U.S District Court for the District of Columbia. The court issued a generally favorable ruling for NACWA and its municipal members in July 2011, finding among other things that it is permissible to set very high daily loadings for sediment and total suspended solids when striving to implement standards expressed as seasonal or annual averages, and that EPA may impose wasteload allocation for municipal stormwater discharges in the aggregate rather

than applying the loadings to individual outfalls. Though the court did disagree with other aspects of the TMDL, these findings marked an important victory for the municipal clean water community.

- ***Sackett v. EPA* Amicus Brief**

NACWA helped contribute to an important clean water victory before the U.S. Supreme Court in April 2012 when the court ruled in *Sackett v. EPA* that administrative orders (AOs) issued by EPA under the Clean Water Act are subject to pre-enforcement judicial review. The decision is a key legal win for NACWA and its members, as it means that clean water utilities receiving administrative compliance orders from EPA, including for alleged discharge permit violations, will now be able to challenge those orders in court immediately. The ability to now immediately challenge these compliance orders should help to curb EPA's past abuse of power in using AOs against public clean water agencies, as well as reduce potential enforcement-related costs for utilities.

- **St. Louis Stormwater Litigation**

NACWA submitted a brief in September 2011 supporting the Metropolitan St. Louis Sewer District (MSD) stormwater fee program arguing that the use of impervious surface to calculate stormwater service charges – as done by MSD in their stormwater program – is increasingly becoming the industry standard for calculating stormwater fees in the most equitable manner. NACWA's participation in this case is important to help protect other municipal stormwater utilities elsewhere in the country from a similar lawsuit.

- **Biogenic Greenhouse Gas Litigation Amicus Brief**

NACWA will soon file an *amicus* brief in federal litigation in support of EPA's decision to defer sources of biogenic greenhouse gas (GHG) emissions – such as wastewater treatment plants – from regulation under new federal air emissions rules. If EPA's decision to defer wastewater treatment plants from these new GHG requirements is reversed, many NACWA members across the country may face additional costly and time consuming permitting and monitoring requirements for their facilities under the Clean Air Act. NACWA's participation in this case is vital to provide the court with an important national perspective on why EPA's deferral of clean water utilities was appropriate, and what the regulatory and financial consequences will be for NACWA members if the deferral is struck down.

- **NACWA *Service Charge Index***

The results from this annual survey are used extensively as a high-level summary of the efforts being made by the clean water community to increase revenues and maintain their systems – as well as a reliable means to compare individual utility rates with regional and national trends.

- **Water, Naturally**

Building on the success of 2008 success of *Liquid Assets*, Penn State Public Broadcasting will again partner with NACWA in a new public service media initiative *Water, Naturally*. With a focus on green infrastructure, *Water, Naturally* will explore sustainable sites, conservation, and the integration of grey infrastructure with natural systems. This initiative will bolster support for Member Agency efforts in this arena and work defining the "Utility of the Future" and enhance NACWA's work as it defines the 'Utility of the Future.