

**TAF Project Overview & Status Report  
(Individual Active Projects in FY 2011\*)  
Current to May 19, 2011**

**Biosolids**

**Sewage Sludge Incinerators (SSI)/Solid Waste Definition - Parts I and II**

These funds were used to develop a comprehensive legal and technical argument against the reclassification of biosolids as a solid waste and the development of MACT standards under Section 129 of the Clean Air Act for sewage sludge or biosolids incinerators. During 2010, NACWA developed comments 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 has now formed a Sewage Sludge Incineration Advocacy Coalition (SSIAC) to guide the Association's activities on the SSI and definition of solid waste issue going forward. All remaining funds in the SSIs/Solid Waste Definition Part II project budget will be returned to the TAF at the end of FY 2011. Future efforts will be funded through the SSIAC.

**Facility and Collection Systems**

**Oregon ACWA SSO Project**

The Board approved \$10,000 for FY 2011 to support an Oregon Association of Clean Water Agencies (ORACWA) project that will develop a technically sound and legally defensible provision for use in National Pollutant Discharge Elimination System (NPDES) permits that specifically allows sanitary sewer overflows (SSOs) in limited circumstances, consistent with accepted design standards and resulting from significant wet weather events. This project will use the "intermittent discharge" provision of the federal regulations and best management practices to incorporate an SSO performance standard into NPDES permits. If Oregon is successful in making this demonstration, the project will outline a path forward for potentially addressing SSOs in other states. This project is fully funded now with contributions from NACWA, ORACWA member agencies, and the ORACWA general fund, and work is currently proceeding on the project with the development of case studies for two Oregon municipalities.

**Litigation/Legal Issues**

**District of Columbia Stormwater Appeal**

NACWA has expended a total of \$24,030 since 2005 on this appeal of a stormwater permit for the District of Columbia. \$12,232 of this amount has come from the TAF, while the other expenditures have come from \$11,798 in contributions from the National League of Cities (NLC), the National Association of Flood &

\*Individual projects not included in the FY 2012 TAF Budget Justification (Attachment D)

Stormwater Management Agencies (NAFSMA), the Wet Weather Partnership (WWP), the West Virginia Municipal League (WVML), and the Virginia Municipal League (VML). EPA issued a revised draft permit in April 2010 and the document is one of the most stringent municipal permits ever proposed. NACWA submitted comments on the draft permit and is currently waiting for the final version of the permit to be issued, which is expected to happen sometime soon. However, despite the very aggressive requirements in the permit, there is still a possibility it may be challenged again by activist groups upset due to its lack of an explicit requirement for numeric discharge limits. NACWA stands ready to participate in litigation over the permit if necessary. Carryover funds from FY 2010, in the amount of \$1,013, are currently available and additional TAF support may be requested if a new appeal is filed. NACWA will also approach its municipal partners in this case regarding additional contributions if further litigation is necessary.

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### BEACH Act Case (Intervention)

NACWA expended \$35,000 on this line item during FY 2008 to continue the Association's involvement in *Natural Resources Defense Council (NRDC) v. EPA*, a legal challenge over EPA's failure to establish new recreational water quality criteria as required by the *Beaches Environmental Assessment and Costal Health Act (BEACH Act)*. These funds were in addition to approximately \$60,000 expended on this matter from the TAF and General Legal Fund during FY 2006 and FY 2007. A settlement was reached by all parties and filed with the court on August 8, 2008 with regard to the legal issues, and a financial settlement between NACWA and the U.S. Department of Justice was reached in December 2008 for payment of \$95,000 to NACWA to cover the Association's attorneys' fees and expenses during the course of the litigation. This litigation matter is complete, although NACWA will continue to use in-house legal resources to track implementation of the settlement agreement. NACWA has received status reports from EPA every six months outlining progress on implementation of the settlement agreement and has also participated in a number of stakeholder workshops to review data gathered under the settlement agreement. Recently, NACWA formed a workgroup to provide greater analysis of EPA's data and scientific studies in an effort to ensure that any new recreational water quality criteria that are developed are based on the best possible science. NACWA's involvement in this process is critical to protect the Association's members from unreasonable new criteria that could negatively impact wastewater and stormwater discharge permits. An additional stakeholder workshop with EPA is scheduled for June 2011 and NACWA will be participating.

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### San Jacinto River Authority WET Appeal

The NACWA Board approved via electronic ballot in March 2008 the Association's participation in an appeal by member agency the San Jacinto River Authority (SJRA) of an NPDES permit with Whole Effluent Toxicity (WET) limits. SJRA appealed the permit in part because EPA Region VI inappropriately federalized an existing state permit and included the contested WET provisions. NACWA agreed to participate in the case due to the overreach of federal permitting authority and also because of concerns over the testing methods used by EPA to establish the WET limits. These are both issues with national implications that could impact NACWA members in other part of the country. The Board approved up to \$7,500 in FY 2008 TAF funds for this case and collaboration in the litigation with the Western Coalition of Arid States (WESTCAS), which agreed to match any NACWA funds. NACWA submitted briefs to the U.S. Environmental Appeal Board (EAB) in support of SJRA in March 2010 and won an important victory in July 2010 when the (EAB) released an opinion remanding the permit back to EPA Region 6 and echoing concerns

raised by NACWA about the inclusion of 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. The EAB's decision is consistent with concerns raised by NACWA both in its brief in the case and at oral argument that EPA had improperly federalized the permit and included WET limits in a manner inconsistent with both Texas's approved water quality standards and the federal Clean Water Act. NACWA stands ready to provide additional assistance to SJRA if necessary when the new permit is issued.

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### Anacostia River Case

In May 2009, the NACWA Board approved \$15,000 in FY 2009 funds for the Association to participate 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. After successfully litigating to force EPA to include daily loads in TMDLs in 2006, the plaintiffs are now seeking to have daily loads be controlling even when the TMDL is directed towards achieving seasonal or annual loadings. The TMDL at issue in the case primarily addresses sediment and total suspended solids that may be discharged over both the growing season and annually. NACWA is collaborating with the Wet Weather Partnership in the case to protect clean water utilities from unreasonable TMDL limits for pollutants that are not easily expressed in true daily limits. Thus far, NACWA has filed a Motion to Intervene, which was granted by the court, and a Motion for Summary Judgment that is still pending before the court. The case has recently been assigned to a new judge, and NACWA continues to wait for a ruling on the summary judgments motions. Additional TAF resources may be requested once the court issues a ruling on the pending motions.

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### SSO Rule Petition

\$30,000 in FY 2010 funds was approved by the NACWA Board in February 2010 for the Association to develop and file a petition with EPA requesting a national rule for sanitary sewer overflows (SSO) to provide clean water utilities with much needed regulatory predictability and guidance regarding SSO issues. NACWA developed a draft petition for rulemaking that was completed in May 2010, but was ultimately put on hold due to EPA's announcement in June 2010 that it was soliciting public comment on a potential SSO rule. NACWA submitted comments and participated in public listening sessions on the issue, and EPA was expected to make a decision about a possible rule by the end of 2010. In early 2011, EPA announced that it was still reviewing its options, so NACWA formed a workgroup to continue advocating with EPA on this important issue. Thanks in large part to NACWA's efforts, EPA recently announced that it will be holding a two day meeting in July to further discuss options for moving forward with an SSO policy. NACWA plans to participate in that meeting and continues to reserve the right to file its planned SSO petition if the meeting does not result in a clear path forward by EPA to address SSO issues.

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### Consent Decree Implementation Research Project

\$7,500 from the FY 2010 TAF was approved by the NACWA Board in April 2010 for efforts to collect information from NACWA members on implementation of wet weather consent decrees. This project was designed to build on NACWA's existing and highly successful *Consent Decree Handbook* and *Consent Decree E-Library*, both of which are designed to assist clean water utilities during the consent decree negotiation

process. The database was posted to NACWA's website in November 2010 and contains responses from over 25 communities across the nation currently under wet weather consent decree, providing information on topics such as the cost of each community's decree, how much utility rates will be increased 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 goal of the survey is to provide 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. NACWA will be working to add additional survey responses from other communities under consent decree in the coming months, and \$2,500 remains from the initial TAF allocation to help improve the functionality of the database.

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### Florida Nutrients Litigation

The NACWA Board approved \$30,000 from the FY 2011 TAF for the Association to participate in ongoing litigation in Florida regarding newly issued numeric nutrient criteria. NACWA filed a *Motion to Participate as Amicus Curiae* in April 2011 in this case, which is a challenge to numeric nutrient criteria developed by EPA for freshwater lakes, streams, and rivers in the State of Florida. NACWA is participating in the case to support its Florida utility members in a challenge to the criteria and to provide an important national perspective on this critical issue. The criteria, which were finalized in November 2010, were developed using controversial scientific methods that NACWA believes are inappropriate, and the Association will use its amicus participation in the case to challenge the criteria for Florida and to argue that a similar development approach should not be used for nutrient criteria in other parts of the country. NACWA will also be able to provide the court with a valuable national viewpoint on nutrient policy and science from the perspective of the clean water utility community. Briefing on summary judgment motions is expected to occur in June, and NACWA will file a brief at that time.

## Utility Management

### ISO Wastewater Management Services Standard Support

With the support of the Targeted Action Fund (TAF), NACWA has been involved in an effort led by the International Organization for Standardization (ISO) to develop standards for the water sector since 2004. As a member of the U.S. delegation, NACWA representatives participated in several Technical Committee and workgroup-level meetings to ensure the final standards did not conflict with current best practices in the U.S. Like most ISO standards, the 24500 series standards that were finalized in November 2007 are voluntary. They were crafted to be as globally relevant as possible and are, therefore, fairly general. Some countries have decided to formally adopt these standards and although the U.S. has not yet decided whether to adopt them, U.S. utilities can choose to adhere to the standards. The final standards are available for purchase from ISO.

During its meeting in November 2007, the ISO Technical Committee – leading up the development of the 24500 series standards – voted to form two workgroups, one on Crisis Management and another on Asset Management. NACWA has been actively participating in order to track the development of standards in these two targeted areas of utility management. All remaining funds for this project will be expended by the end of FY 2011 and there are no planned activities in FY 2012.

### Effective Utility Management Initiative

The NACWA Board approved \$10,000 from the FY 2008 TAF budget to support the ongoing activities associated with the Effective Utility Management (EUM) initiative. The collaborating organizations – NACWA, the Association of Metropolitan Water Agencies (AMWA), the Water Environment Federation (WEF), the American Water Works Association (AWWA), the American Public Works Association (APWA), and the National Association of Water Companies (NAWC) – completed work on a *Primer* for utilities in 2009 detailing the ten attributes and five keys to management success, as well as an online resource tool box, developed by NACWA, to provide easy access to existing resources organized according to the attributes and keys to success. The TAF funding will be used to contribute the Association's share to a NACWA-led effort to update the [www.watereum.org](http://www.watereum.org) website that is now underway. AMWA, WEF, AWWA, APWA, and NAWC will also contribute to the redesign of [www.watereum.org](http://www.watereum.org).

### Other Issues

#### WERF Effort on Water Quality Linkages – Nutrient Case Study and Site Specific Criteria Development Effort

NACWA is contributing \$10,000 to a new Water Environment Research Foundation effort that will build on work initiated under the Foundation's Research Challenge, *Linking Receiving Water Impacts to Sources and to Water Quality Management Decisions*. The Challenge seeks to reliably describe the linkages between pollutant discharge levels and adverse health and/or environmental impacts in receiving waters and to determine the net environmental benefit from process and technology investments in order to evaluate the relative cost versus benefit of environmental policy/management decisions. The new project will work to identify successful methods for developing site specific nutrient criteria.