

CLEAN WATER ADVOCATE

Timothy Houghton, of the City & County of Honolulu Department of Environmental Services, Hawaii was elected to NACWA's Board of Directors during the Association's Fall Strategic Leadership Retreat in September.



A Clear Commitment to America's Waters

OCTOBER 2008

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We are pleased to bring you the new look of the Clean Water Advocate, now with full color photos, new graphics and more.

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On the Hill

NACWA Advocacy Intensifies as Congress Moves to Address Infrastructure Funding, Water Quality Issues

A flurry of legislative activity is capping off a busy year in terms of NACWA's advocacy efforts on Capitol Hill, particularly as it relates to additional federal funding to help communities meet their growing clean water infrastructure needs.

On September 17, the Senate Environment and Public Works (EPW) Committee approved the *Water Infrastructure Financing Act* (S. 3500) to provide \$38.5 billion over five years for both the clean water and drinking water state revolving funds (SRFs). NACWA worked hard to get this legislation introduced in the Senate after the House passed its version in 2007. The Senate bill contains \$19.6 billion in total funding for the clean water SRF (fiscal years 2008-2012); \$1.1 billion in grants for sewer overflow control projects; and \$49 million in grants for critical watershed restoration projects.

The legislation would also clarify that green infrastructure projects qualify for SRF funding and include provisions to create incentives for CWSRF applicants to use green infrastructure techniques — reflecting a letter NACWA sent Jan. 28 to the EPW Committee urging the inclusion of these provisions. Due to recent



developments, the prospects for full passage of the bills are uncertain.

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» Amy Walter, editor of *The Hotline*

Law Seminar to Provide Political Analysis, Discussion of Critical Clean Water Legal Issues

Registration is now underway for NACWA's 2008 *Developments in Clean Water Law Seminar*, scheduled for November 12-14 at the Fairmont Hotel in Washington, DC. The nation's capital will provide the perfect backdrop for an analysis of the outcome of the presidential and congressional elections — and a provocative discussion of critical legal issues facing the clean water community. As the only conference specifically designed for clean water attorneys, the *Seminar* promises an

exciting and engaging program with many of the best legal practitioners from around the nation participating as speakers. Amy Walter, editor of *The Hotline* and one of the top political commentators in Washington, will lead off the conference with an analysis of the November elections and insights on what the new administration and Congress could mean for the clean water community. The remainder of the *Seminar* will feature a series of panel presentations on key clean water legal topics.

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Work Underway on Climate Change Primer for Clean Water Utilities

NACWA has started work on a *Climate Change Primer* to help clean water utilities better understand the emerging challenges and opportunities presented by federal, regional, and state efforts to address climate change. The *Primer* is a key component of the Association's *Critical Issues Action Initiative* for 2009 and will explain how climate


change legislation and regulation could affect operations for publicly owned treatment works (POTWs).

As climate change issues gain increased attention at all levels of government, many clean water agencies may be unaware of how these new initiatives will affect their operations, and of the many challenges and opportunities presented in the new climate change framework. The *Primer* will aid clean water utilities in becoming better informed about these issues and support their engagement in ongoing discussions in order to ensure that their interests are protected.

Financial Opportunities Identified & Outlined

Specifically, the *Primer* will identify and outline potential financial opportunities available to POTWs as a result of climate change initiatives. Included among the opportunities described will be the ability under a likely federal cap-and-trade system for clean water utilities to capture

many of the greenhouse cases they produce and earn credits which could then be sold in a carbon market like the Chicago Climate Exchange, the world's first and North America's only active voluntary, legally binding integrated trading system to reduce emissions of all six major greenhouse gases (GHGs), with offset projects worldwide (see www.chicagoclimatex.com).

The *Primer* will also address the regulatory and legal issues a utility should consider when looking at entering the carbon market, as well as provide technical information on how utilities can capture their emissions in a way that allows them to generate carbon credits. Also included in the *Primer* will be an analysis of the November 2008 presidential and congressional elections from the perspective of potential climate change legislation in the new Congress. The *Primer* is expected to be completed in January 2009 and will be available for download from the Association's website, www.nacwa.org. 




Water Sector Launches Security Reporting Tool, NACWA Members Urged to Participate

The water sector is currently gathering information on the 22 measures developed by the Critical Infrastructure Partnership Advisory Council (CIPAC) Metrics Workgroup to assess the "all hazards" security progress of utilities. All of the nation's water and wastewater utilities are being asked to participate in the anonymous and voluntary reporting, and NACWA urges its members to complete the reporting by the October 23, 2008 deadline (see *MU 08-14*). The reporting tool is available at <http://water-sector-progress.org/>. The Water Information Sharing & Analysis Center (WaterISAC) is securing all responses and will only report the responses in aggregated form. WaterISAC membership is not required to complete the survey.

The CIPAC Metrics Workgroup, which consisted of representatives of water sector

associations, including NACWA, government agencies, and water and wastewater utilities, developed the 22 measures to support the goals and objectives of the National Infrastructure Protection Plan's *Water Sector Specific Plan*. The measures will collect information on security activities, the security of hazardous chemicals, and risk reduction outcomes.

The information collected will help NACWA and other water sector associations in their advocacy efforts regarding water and wastewater utility security. The proactive security measures taken by the water sector will be illustrated by the reporting results, and areas for improvement will be defined. Information is needed from all sizes and types of utilities, and all NACWA utility members should ensure that their information is submitted before the October 23, 2008 deadline. 



Financial Challenges Front and Center at 2009 Winter Conference

The recent financial crisis has affected every sector of the U.S. economy and the municipal wastewater community is no exception. Even before the crisis, rapidly rising capital costs were posing challenges for clean water agencies. With the cost of borrowing money now on the rise, the value of municipal bonds in flux, and the price of insurance for large projects skyrocketing as a result of the financial crisis, clean water agency resources will be stretched even further. NACWA's 2009 Winter Conference, *Controlling Chaos: Managing Rising Capital Costs*, February 3-6, 2009, at the Westin Buckhead Atlanta in Atlanta, Ga. will explore these and other drivers that are requiring clean water agencies to re-prioritize capital spending and find new and creative ways to improve the efficiency of currently spending.

According to Merrill Lynch's *Municipal Master Index*, concerns about the health of the U.S. economy are driving state and local government bonds lower. In some cases, state and local governments are holding their bond offerings altogether until conditions improve (www.bloomberg.com). This latest hit to one of the major financing options for clean water agencies only adds to the existing issues surrounding the bond



insurance industry, which took a serious beating in the early days of the subprime mortgage crisis.

NACWA's 2009 Winter Conference will explore these and other issues facing clean water agencies today. An invited speaker from Standard & Poor's will discuss the important role of the municipal credit rating agencies and the implications of the recent developments in the municipal credit markets for clean water agencies seeking to

borrow money. Credit tightening is already having impacts from some communities who may now have to restructure their borrowing strategies only a few years after securing credit for planned projects.

Look for additional information soon, and mark your calendars now, for NACWA's 2009 Winter Conference, *Controlling Chaos: Managing Rising Capital Costs*, February 3-6, 2009, at the Westin Buckhead Atlanta in Atlanta, Ga. ♦

EPA Signs Permit Fee Rule Despite Directive from Congress Barring its Implementation

The U.S. Environmental Protection Agency (EPA) has announced that it has signed the final rule establishing incentives for states to increase fees for National Pollutant Discharge Elimination System (NPDES) permits, despite strong opposition by NACWA, state water officials, and a clear mandate from Congress barring such an action. The rule will drive states to fully fund their NPDES permit programs through fees or run the risk of having their Clean Water Act (CWA) Section 106 grant funds cut.

Financial Burden Could Be Significant

This rule is anticipated to place a significant financial burden on clean water agencies, particularly small to mid-size utilities. Some clean water agencies may have to pay up to an additional \$400,000 a year in new permit fees and may be forced to take money away from other important water quality programs. NACWA, along with numerous other organizations, has opposed the rule since its inception and believes EPA has now over-stepped its authority in moving forward with the rule and ignoring the congressional directive. Congress inserted

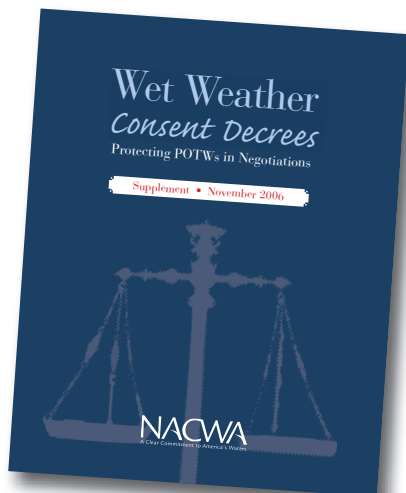
report language into the fiscal year (FY) 2008 omnibus budget, which included EPA's funding, that barred the agency from moving forward with its permit fee proposal.

When the rule was first proposed, NACWA submitted comments outlining its concerns about the plan to tie critical Clean Water Act funds to the proposed permit fees. The Association will continue to work with the Association of State and Interstate Water Pollution Control Administrators (ASIWPACA), the Federal Water Quality Coalition (FWQC), and other interested parties to challenge to the rule. ♦

NACWA Plans Update to Wet Weather Consent Decree Handbook

NACWA's Board of Directors recently approved plans to update the Association's *Wet Weather Consent Decree Handbook*. The *Handbook* serves as a key resource to clean water agencies that are either currently under a consent decree or anticipate entering negotiations on a decree in the near future. The update will serve as a supplement to the *Handbook*, which was first published in 2003 and last updated in 2006, and will provide the most up-to-date information and analysis on recent consent decree trends and negotiation strategies.

The *Handbook* is the only publication of its kind and has proven to be an essential tool for negotiations of federal or state enforcement actions. It covers a variety of topics including strategies to maintain municipal autonomy in an enforcement settlement and leveraging utility expertise in negotiations – and features techniques to integrate legal obligations and deadlines in daily municipal operations. It also includes a list summarizing municipal consent decrees and an analysis of enforcement trends.



Expanded E-Library to Provide Added Value

As a companion resource, an electronic library of consent decrees is available on NACWA's website, allowing users access to the most comprehensive list of municipal consent decrees currently available. This on-line 'e-library', available at www.nacwa.org, is home to 85 consent decrees from all ten federal regions.

The downloadable update to the *Wet Weather Consent Decree Handbook* is being funded through the Association's Targeted Action Fund (TAF) and is anticipated to be completed for release at NACWA's *Developments in Clean Water Law Seminar* on November 12 – 14, 2008 in Washington, D.C. (see related article on page 1). ♦



NACWA Website to Get New Look, New Functionality



NACWA will soon roll out a new design for its website. The Association has had a presence on the web since the early 1990s and has traditionally focused most of its offerings to its Members and Affiliates. The redesign will allow NACWA to not only enhance members' experience, but will also establish a significant public presence for the Association and its initiatives online.

Enhanced Access to Key Information Featured

When launched later this month, the site will provide enhanced information and access to Association members by organizing information under issues-driven categories with visual themes, while keeping the content-rich members-only portions of the secure. Looking for the latest information on meetings, awards, combined sewer overflows or nutrients? The new categories will have the most recent information in the legislative, regulatory and legal arenas under one heading, with no need to switch between sections. In addition, if you can't find the information you are looking for, the site will have a new and improved search function.

New technical improvements will also be implemented, focused primarily on ease-of-use. These include a single sign-on feature that will let individual users access all resources with a single account – replacing the current two-account requirement. The new front page will prominently feature the Association's mission and strategic goals by visual representations. A member focus group has provided important input and perspectives as the redesign has proceeded.

Look for the New and Improved Site Soon

We are excited to preview the new site at WEFTEC'08 in Chicago, Ill. and plan to go live soon thereafter. Keep watching the *Clean Water Advocate* and other member communications for more information on the new and improved www.nacwa.org. ♦

NACWA Visits the Windy City for WEFTEC – Blow By To See Us!

NACWA will be well represented this year at WEFTEC'08 in Chicago, Ill. with two booths on the exhibit floor at McCormick Place, and its annual Hot Topics Breakfast on October 21. We invite you to stop by the NACWA booth (Booth # 35013) for a pre-view of the Association's newly redesigned website and up-to-date news on the latest advocacy issues in the nation's capital and in the courts.

Clean Water Advocacy Center to be a Presence on Critical Issues

NACWA has once again teamed up with the Water Environment Federation (WEF) and the American Public Works Association (APWA) to host the *Clean Water Advocacy Center (CWAC)* at WEFTEC '08. This is the second year that the CWAC (Booth # 34003) will be communicating – with your help – the importance of clean water and infrastructure funding to candidates running for president and the Congress. This year the CWAC will feature photo opportunities with both presidential candidates (of the


cardboard cut-out variety) to attract visitors and encourage support for clean water as a central priority of any new administration. Come sign on to a letter asking our new President to make support for clean water a priority in his new administration, and get your photo taken with the candidate of your choice.

Ken Kirk to Speak on Panel about Financial Crisis, Opportunities in Congress

In addition, NACWA Executive Director Ken Kirk will speak on a panel from 8:30 a.m. - noon, Monday, Oct. 20, where he will be joined by Ben Grumbles, EPA assistant administrator for water; Dick Lanyon, general superintendent of the Metropolitan Water Reclamation District (MWRD) of Greater Chicago; and Sandi Allen, of the New York Department of Environmental Conservation, to discuss "Fees, Finance, and the Future: Water is Life and Infrastructure Makes it Happen." Ken will provide the municipal perspective in context of the current economic crisis and discuss opportunities

in the upcoming Congress. Closing out the panel discussion will be Chicago Mayor Richard Daley.

NACWA's Hot Topic Breakfast Offers Exchange with EPA Officials

NACWA will hold its annual Hot Topics Breakfast on Tuesday, October 21, from 8:00 – 10:00 am in the Michigan A/B room at the Sheraton Chicago Hotel & Towers (the WEFTEC'08 headquarters hotel). Attendees will have the opportunity to engage key U.S. Environmental Protection Agency (EPA) officials on a broad slate of water quality-related topics. Ephraim King, Director of EPA's Office of Science and Technology, and Craig Hooks, Director of the Office of Wetlands, Oceans, and Watersheds will be on hand along with other EPA representatives to discuss issues including nutrient control, effluent guidelines, the watershed approach and whole effluent toxicity, just to name a few. There is no cost to attend NACWA's Hot Topics Breakfast and registration is not required. We look forward to seeing you in Chicago! 



New Fiscal Year, New Members, New Member Services

As NACWA expands its advocacy efforts on Capitol Hill, with federal agencies, and in the nation's courtrooms more organizations are taking note and adding their voice to our outreach efforts. At the September 30 end of the Association's fiscal year NACWA's membership topped out at 360 agencies and organizations – nationwide – comprised of 275 public Agency Members, 10 Public Affiliates, 51 Corporate Affiliates, 22 Legal Affiliates and 2 Supporting Affiliates. Most recently, NACWA has welcomed two new Corporate Affiliate members to the Association. They are:

Home Service USA, Inc., Miami, Fla.

Represented by: Bruce Tobey, vice president business development, former mayor and current city council president of Gloucester, Mass.

Home Service USA, Inc. is the world's leading provider of domestic emergency repair programs with more than eight million contracts worldwide.

Miller3 Consulting, Inc., Atlanta, Ga.

Represented by: Dave Miller, chairperson.

Miller3 Consulting, Inc. provides advisory services and consultancy to governments



and corporations focused on understanding the organizational environment, its policies, processes and people, in order to develop measurable results.

October 1 marked the start of NACWA's fiscal year. This year several exciting initiatives are planned to enhance each members experience. Included among these is the Association's newly redesigned, issue-focused website; a series of webinars that will enable more members to engage more of their staff in the Association; and increased sponsorship and outreach opportunities for Affiliate Members. In addition, throughout the year you will notice the roll out of projects associated with the *Critical Issues Action Initiative* focused on the key public

policy issues of nutrients, climate change, pharmaceuticals, watershed management, infrastructure sustainability, and security. To view the Initiative and learn more about key projects and their benefit to you as a NACWA member, visit www.nacwa.org/criticalissues.

In addition to enhancing our member services, growing NACWA's membership continues to be a priority this year. Increased membership strengthens our voice as the environmental practitioners and our advocacy for sound environmental regulations and policies. If you are aware of a clean water agency or organization that would benefit from NACWA membership, please e-mail their information to membership@nacwa.org. 💧



« Keith Linn, an environmental specialist with the Northeast Ohio Regional Sewer District, testified on behalf of NACWA before the House Transportation and Infrastructure Subcommittee on Water Resources and Environment Sept. 18 about the need for more research into the possible environmental and public health effects associated with contaminants of emerging concern in the nation's waterways. He also discussed efforts by NACWA member agencies, including his own, to address this water quality challenge and said it must be addressed in a cooperative and collaborative manner. 💧

On the Hill

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NACWA Works to Ensure Second Stimulus Package Includes CWSRF Funding

As Congress wrapped up business in advance of the elections, NACWA was busy meeting with key congressional staff on a possible second economic stimulus package. Work on the \$60 billion bill stalled, however, after Senate Democrats failed to garner the 60 votes necessary to overcome a Republican filibuster. NACWA's work earlier in the month ensured that the House stimulus bill, which passed on September 26, did include \$6.5 billion for the clean water state revolving fund (CWSRF), a vast improvement over the \$689 million allocation in FY 2008.

The stimulus package was put on the back-burner as Congress diverted its attention to the financial system rescue measure before heading home for the November elections. Senate Majority Leader Harry Reid (D-Nev.) has announced the Senate will likely be back in session the week of November 17 in what will at that point be a post-election or "lame duck" session. It is not clear, however, whether the stimulus package will be on the agenda. Despite these delays, NACWA continues its efforts on behalf of its members to stress the importance of authorizing funding for infrastructure projects that will create jobs,

stimulate the economy, and benefit the environment.

NACWA Seeks House Support for Affordability/Financial Capability Legislation

NACWA also continues to collaborate with interested members of the House on bipartisan affordability/financial capability legislation (see August/September *Clean Water Advocate*). The Association is working to secure House sponsors for the same bill, S. 3443, which was introduced in the Senate by Ohio Sens. George Voinovich (R) and Sherrod Brown (D). S. 3443 calls on EPA to update its 1997 *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development*.

NACWA's Affordability Workgroup worked closely with the two senators to help establish a realistic approach for defining a utility's financial capability regarding long-term control plans (LTCPs) to address combined sewer overflow (CSO) and sanitary sewer overflow (SSO) controls through a more flexible, site-specific, and integrated approach espoused by NACWA in its November 2007 *NACWA Financial Capability Compilation*. The House legislation would help spotlight the need for EPA to revise its outdated affordability guidance and also provide Association members with

an additional tool in their affordability negotiations

NACWA Helps Shape Sewage Overflow Community Right-to-Know Act

NACWA also continues to play a leadership role in shaping other bills of vital importance to the clean water community. Among them is the *Sewage Overflow Community Right to Know Act* (S. 2080). The Senate EPW Committee approved S. 2080, which was introduced by Sen. Frank Lautenberg (D-N.J.), chair of the Subcommittee on Transportation Safety, Infrastructure Security, and Water Quality, on September 17. The bill would establish a national program for monitoring, reporting, and notification of sewer overflows. NACWA worked closely with Lautenberg's staff on language to ensure strong protections for public health without putting an unreasonable burden on municipalities or unnecessarily alarming the public. NACWA also worked for several months with American Rivers and key staff from the Transportation & Infrastructure (T&I) Committee on the House version of the bill (H.R. 2452), introduced by Rep. Timothy Bishop (D-N.Y.), that passed on June 23. It is unclear whether the Senate will have enough time to move on the legislation this year, but it is likely that the bill will be taken up again in the 111th Congress. 📍



« Don Parrish (right), senior director for regulatory relations at the American Farm Bureau Federation, provides his perspective regarding NACWA's draft 21st Century Watershed Act. He participated in a panel discussion on the draft legislation at the Association's 2008 Fall Strategic Leadership Retreat. NACWA Board Member Charlie Logue (far left), chair of the Association's Strategic Watershed Task Force, which is spearheading the legislative effort, led the discussion. Also providing their views on the bill were (from left) Lajuana Wilcher, former EPA assistant administrator for water, who assisted NACWA in drafting the legislation; Paul Schwartz, national policy coordinator for Clean Water Action; Brett Rosenberg, an environmental specialist for the U.S. Conference of Mayors; and Marcia Willhite, director of the water pollution control division at the Illinois Environmental Protection Agency. 📍

EPW Committee Abruptly Cancels Biosolids Hearing

An oversight hearing by the Senate Environment and Public Works (EPW) Committee scheduled for Sept. 11 was abruptly canceled on Sept. 10 after the committee learned that land application opponents were using the event to force a quick settlement in a lawsuit. NACWA had worked with the committee's majority and minority staff to ensure the panel of witnesses included a municipal representative that could testify about the steps clean water agencies must take to meet the stringent Part 503 requirements for biosolids land application under the Clean Water Act. Also scheduled to testify were opponents of land application, including a Georgia farmer who claimed that biosolids spread on his land in the 1970s killed his cattle. The farmer has been involved in a lawsuit against researchers at the University of Georgia, whom he accused of falsifying data. The committee learned of a letter from lawyers for the farmer that indicated the briefing was being used as a tool to coerce a rapid settlement in the lawsuit. It is not clear whether the hearing will be rescheduled at this time. 📌

Law Seminar

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Nutrients to Receive Significant Attention

One of the most critical issues to be addressed will be nutrient regulation. Speakers will discuss the recent petitions filed with the U.S. Environmental Protection Agency (EPA) calling for more stringent nutrient controls, as well as the potential legal and regulatory impacts an increased focus on nutrients could have on clean water utilities. A panel on the issue will also identify legal strategies utilities should consider in addressing nutrient issues.

Top EPA Officials to Weigh In

Climate change is another topic that will receive careful examination, with EPA Assistant Administrator for Water, Benjamin Grumbles, and a panel of legal experts discussing how anticipated climate change legislation and regulation at the federal and state level will affect the clean water community, including potential legal complications and their solutions. Enforcement issues will also take center stage with Granta Nakayama, EPA's top enforcement official, joining a panel of speakers on the final day of the *Seminar* to address recent enforcement trends involving wastewater utilities and discuss tips for clean water attorneys on how to better deal with potential enforcement actions. Other topics to be discussed at the *Seminar* include stormwater, biosolids management, and green infrastructure. There will also be a presentation on the "Top Ten Clean Water Act Cases" of the past year that could most directly affect clean water utilities.

Continuing Legal Education (CLE) credits will be available to attendees, including in the area of ethics. More information on the *Seminar*, including registration information and specific state CLE approvals, is available at www.nacwa.org. We hope you will join us in November! 📌

Clean Water America Alliance Launched



On September 24, the 501(c)(3) non-profit Clean Water America Alliance (CWAA) was launched. A broad cross-section of interests, led by NACWA, have come together through the Alliance to begin an important dialogue on the future by focusing on exploring and analyzing issues of critical importance to the nation's ability to provide clean and safe water, offering information and education to citizens and policy-makers on key issues, and recognizing organizations and individuals for innovation and outstanding achievements in water quality and quantity arena.



Focus on Changing the Water Paradigm

At the launch, former NACWA President Dick Champion, chair of the Alliance and director of the Independence Water Department, Mo., said "we are at a unique point where an alliance of diverse interests have come together to meet future challenges on a holistic, watershed basis, with a focus on sustainability and green cities." The new Alliance will work to eliminate the silo thinking that has kept clean water, drinking water, stormwater and water reuse interests segregated and strive to change the water paradigm.

The Alliance's diverse Board of Directors includes leaders from the private sector (including engineering, manufacturing, legal and corporate executives), municipal utilities, state agencies, the environmental and conservation communities and academia – as well as three former Assistant Administrators of Water for the U.S. Environmental Protection Agency (EPA). With the vision of a world where water is viewed, managed and valued as one resource, the Alliance's leadership is working to identify and implement specific strategic programs and initiatives that support its essential objectives. A Founder Campaign is also underway which provides both public and private entities a unique opportunity to become founding members of the organization. Learn more the Alliance and its critical initiatives at CleanWaterAmericaAlliance.org. 📌



⚡ **Former NACWA President Dick Champion addresses reporters and attendees at the launch of the Clean Water America Alliance, which he chairs.**