

CLEAN WATER ADVOCATE

George Hawkins, General Manager of DC Water, serves as chair of NACWA's Money Matters Task Force (see related article below)



A Clear Commitment to America's Waters

OCTOBER/NOVEMBER 2010

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NACWA Money Matters Campaign Garners Momentum

NACWA's *Money Matters* campaign has made significant progress over the past several months, including the creation of a Member Agency Task Force, logo, tagline, web presence, and a leave-behind flyer conveying a compelling message and offering short and long-term solutions. The confluence of the ongoing economic downturn and an expansive regulatory agenda has made it critical to advance, as the *Money Matters* tagline states, "smarter investment to advance clean water."

Money Matters Message Seeks New Approach to Regulatory Priority-Setting

With the guidance of the Money Matters Task Force, led by General Manager of DC Water George Hawkins, a clear and compelling message was developed and put into an effectively designed two-page flyer. As the flyer states:

"Municipalities throughout the country continue to invest in their systems but face a regulatory landscape where everything is a priority and economics are an afterthought. If local public utilities cannot partner with states and the federal government to determine how best to squeeze

maximum water quality benefit out of every dollar, then the next generation of water quality improvements will continue to elude us. We must not let this happen."



**Money
Matters™**

As municipalities face an aging infrastructure crisis and new regulations on nutrients, stormwater, and sanitary sewer overflows, the U.S. Environmental Protection Agency (EPA) offers little in the way of guidance as to what its priorities are for implementation purposes, and insufficient

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Elizabeth Toot-Levy, Environmental Specialist with the Northeast Ohio Regional Sewer District was one of the participants in NACWA's Nutrient Summit. The Summit featured an interactive discussion with key federal, state, municipal, legal and NGO representatives.

Nutrient Summit Initiates Dialogue on New National Framework

NACWA members gathered in Chicago September 16 and 17 for the Association's Nutrient Summit – to hear from key policymakers and stakeholders and engage in a dialogue on a viable national path forward on nutrient issues. Key federal, state, municipal, legal and NGO representatives provided presentations that framed the issues and set the stage for a productive facilitated session. The dialogue among NACWA members from across the country focused on the key building blocks of a more rational approach to addressing nutrient-related water quality impacts. Participants highlighted the need to establish causal linkages before imposing nutrient controls and the need to address nutrients on a site-specific basis, with sound modeling being one of the key ways to accomplish this. Given

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2010 Law Seminar to Provide Critical Insights, Information on Clean Water Issues

Join NACWA for the 2010 *Developments in Clean Water Law Seminar*, November 17 – 19 at the Inn at Loretto in beautiful Santa Fe, N.M. This year's Seminar promises to offer an informative exploration of the hottest topics in clean water law and will feature many top attorneys from across the nation.

Affordability and Regulatory Challenges Featured

Affordability concerns will take center stage at this year's *Seminar* with two different panel presentations focusing on issues both within the context of recently negotiated consent decrees, as well as from the perspective of utilities implementing existing consent decrees. The discussion will kick off with a panel featuring case studies from a number of NACWA member agencies that have recently completed consent decree negotiations, including lessons learned and advice on making effective affordability-based arguments. The conversation will then continue with a second panel of NACWA members already under consent decrees but continuing to struggle with affordability issues. The speakers on this panel will explore ef-

forts by utilities – and the clean water community as a whole – to gain more legal and regulatory flexibility in prioritizing needed clean water investments.



Regulatory developments impacting wastewater and stormwater utilities will also receive substantial attention during the *Seminar*, including how emerging new regulations from the U.S. Environmental Protection Agency (EPA) addressing nutrients, sanitary sewer collection systems, and stormwater could impact NACWA members. The Agency is also considering changes to existing regulations governing stormwater management standards, the incineration of biosolids, and water quality standards, – all of which could significantly affect the

operations of clean water agencies. A panel of legal experts will discuss these potential changes and their implications from both a legal and regulatory perspective. Other topics to be addressed include a review of the most important Clean Water Act legal cases of the past year, a discussion of regional clean water developments and their national implications, and an overview of current enforcement trends confronting wastewater and stormwater utilities.

Plan Now to Attend

NACWA's *Law Seminar* is the only legal education program of its kind designed specifically for clean water attorneys and utility managers. Continuing Legal Education (CLE) credits will be available, including ethics credits. Additional information on those states offering CLE credit, registration and hotel information – as well as the Seminar agenda are available on NACWA's website, www.nacwa.org/10law. Don't miss this opportunity to join your clean water colleagues for an engaging and informative program! ♦

NACWA Advocacy Efforts Strive to Ensure Federal Payment of Stormwater Fees

NACWA focused significant attention in recent weeks on the growing issue of federal government facilities refusing to pay stormwater fees to local clean water utilities – holding a high-level meeting with officials at the U.S. Department of Justice (DOJ) and responding to a recent decision by the U.S. Government Accountability Office (GAO) regarding payment of impervious surface charges in the District of Columbia. NACWA's engagement on this issue comes amid increasing concern within the clean water community over the refusal of certain federal government facilities to pay local stormwater fees, particularly fees based on impervious surface area, by claiming such charges represent an impermissible tax on the federal government.

NACWA met on September 28 with top DOJ officials, including the Associate Attorney General, to further advocate the Association's legal and policy position that impervious area charges (IACs) and other stormwater and wastewater fees levied by municipal utilities should qualify as reasonable service charges under the Clean Water Act and be paid by the federal government. The meeting followed up on a previous letter NACWA sent to DOJ outlining in detail the Association's legal arguments in support of this position. The DOJ officials at the meeting were receptive to NACWA's concerns and indicated that the issue was in need of resolution. They also displayed a clear understanding of the national importance of this issue to clean water utilities and demonstrated

an awareness of the significant problems utilities would face if federal government facilities and other tax-exempt organizations refused payment of certain fees by alleging them to be impermissible taxes. Although DOJ has not yet made a decision regarding how to address the issue, they continue to study the matter closely and NACWA will continue to communicate with DOJ to seek definitive legal guidance.

GAO Legal Opinions Split—Legislative Solution Sought

On September 29, in a development unconnected with NACWA's DOJ meeting, GAO released two legal opinions regarding payment of an IAC assessed to federal government facilities in the District of Columbia. In one letter, sent to NACWA

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NACWA Members Advance Clean Water Agenda at Two Key Hearings

During September NACWA members helped to advance the clean water community's agenda on two key policies during hearings conducted by the House Transportation & Infrastructure Committee (T&I). Specifically, NACWA members were asked to testify on the use of clean water funding provided by the *American Recovery and Reinvestment Act (ARRA)* and on the need for increased acceptance of green infrastructure technologies in stormwater management.

AAR A Oversight Ongoing

Jeff Theerman, NACWA President and Executive Director of the Metropolitan St. Louis Sewer District (MSD), testified before the House T&I Committee on September 29 as part of the committee's ongoing efforts to oversee implementation of ARRA funds provided to programs under their jurisdiction. Theerman's testimony highlighted the beneficial impacts Clean Water SRF ARRA within his utility and for the City of St. Louis. The \$11 million in CWSRF ARRA funds his utility received were used to construct the Argonne and Upper Maline Creek Projects supporting MSD's efforts to relieve capacity problems and address overflows events. The Metropolitan St. Louis MSD also utilized the *Build America Bonds Program* which was enacted in ARRA. MSD issued \$137 million in Build America Bonds – allowing the utility to move forward on a number of important projects, and resulting in a savings of approximately \$20.5 million in interest costs. During questioning Theerman highlighted NACWA's recently launched *Money Matters* campaign as he urged T & I Committee Chair, James



▲ Jeff Theerman, NACWA President and Executive Director of the Metropolitan St. Louis Sewer District, Mo. testified before the House T&I Committee on September 29 as part of the committee's ongoing efforts to oversee implementation of ARRA funds provided to programs under their jurisdiction.

Oberstar (D-MN), to lead the Committee in “prioritizing clean water needs” to ensure water pollution abatement projects result in the largest water quality benefit.

Use of Green Infrastructure in Stormwater Management Examined

Testifying before the Water Resources & Environment Subcommittee of the House T&I Committee on September 30, Howard Neukrug, Director, Office of Watersheds at the Philadelphia Water Department (PWD) addressed the effectiveness of green infrastructure technologies for stormwater management. Neukrug's testimony focused on the PWD's implementation of green infrastructure in managing the city's stormwater runoff. The City of Philadelphia is currently pursuing an ambitious \$2 billion, 25 year plan to manage one-third of runoff from the City's impervious surfaces through

the use of green infrastructure. The overall plan – part of the City's *Greenworks* campaign – will restore nearly 20 miles of urban stream corridors. During his testimony, Neukrug also highlighted both the City and NACWA's support for the *Green Infrastructure for Clean Water Act of 2009* (H.R. 4202). The legislation would develop 3-5 regional centers for excellence focusing on green infrastructure, implement a green infrastructure grants program, and establish an office within the U.S. Environmental Protection Agency (EPA) to promote green infrastructure approaches in water quality management. The legislation currently enjoys the support of 44 co-sponsors in the House of Representatives.

For more information on NACWA testimony can we found on the Association's website, www.nacwa.org, under *21st Century Challenges—Infrastructure Funding*. 🌱

Nutrient Summit Initiates Dialogue on New National Framework

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the current challenges with establishing linkages between nutrients and in-stream impacts, there was also significant discussion of a technology-based “ceiling” where local water quality conditions indicate that point source nutrient reductions are needed. The need for states to set rigorous requirements for nonpoint sources was also a common theme.

The information and outcomes resulting from the facilitated session will help provide the foundation for NACWA's advocacy on this issue going forward. The Association is now working to finalize an issue paper, reflecting the discussions, and planning an aggressive set of next steps to build on the momentum generated by the Summit. First among them being meetings with key stakeholders like the

U.S. Environmental Protection Agency (EPA) and the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA). Convening a broader dialogue with all of the key interests, including the environmental NGO and nonpoint source communities, is also a possibility. NACWA will keep its members apprised of developments as they take place. 🌱

NACWA Starts Strong with New Members in FY 2011

Realizing the power of many and speaking with one voice – NACWA looks to expand its membership in the new fiscal year. NACWA welcomes two public Member Agencies and three Affiliate Members to the Association.

Public Agencies

North Tahoe Public Utility District, CA
Represented by Curtis Aaron, Deputy General Manager/CEO

North Tahoe Public Utility District is located in Tahoe Vista, California and serves six communities and a population of 10,000. To learn more about North Tahoe Public Utility District please visit www.ntpud.org.

City of Newark, OH

Represented by Roger Loomis, Utilities Superintendent

The City of Newark serves a population of 47,500 and operates with the mission of enhancing the quality of life in Newark by providing essential water and wastewater services to the community and protecting the water environment. To learn more

about the City of Newark please visit www.newarkohiowater.net.

Corporate Affiliates

Conestoga-Rovers & Associates - Infrastructure & Engineering

Represented by Bryan Smith, President

Conestoga-Rovers & Associates - Infrastructure & Engineering is based in Buffalo, New York and has broad municipal wastewater engineering expertise in the areas of sewage collection systems (gravity sewers, pump stations, and force mains), wastewater treatment facilities, biosolids management, utility planning, operation and maintenance, and asset management services. Please visit www.craworld.com.

RMC Water and Environment

Represented by Monica Oakley, Principal

RMC Water and Environment is based in Walnut Creek, California and has re-joined NACWA after merging with a former member, Oakley Water Strategies. The combined company, RMC Water and Environment, provides local, regional, and state-wide public agencies with access to over 100 highly qualified professionals

with specialized expertise in water resources, water recycling, and wastewater engineering and planning. Please visit www.rmewater.com.

Legal Affiliate

Lloyd Gosselink Rochelle & Townsend, P.C

Represented by Lauren Kalisek, Principal

Lloyd Gosselink Rochelle & Townsend, P.C is an environmental law firm based in Austin, Texas. Lauren has served as a guest speaker at past NACWA Legal Affairs Committee meetings, and will also speak at the Association's upcoming Law Seminar in Santa Fe. Please visit www.lglawfirm.com.

Each of these new members joined the Association because current NACWA members shared their experiences and the value they receive from membership. If you are aware of a clean water agency, or organization, that would benefit from learning more about NACWA's priorities, please contact Kelly Brocato, Director Membership Development at kbrocato@nacwa.org.

NACWA's Hot Topic Breakfast at WEFTEC Featured EPA Officials



« NACWA's annual Hot Topics Breakfast during WEFTEC 2010 in New Orleans, La., drew over 60 participants and featured comments from U.S. Environmental Protection Agency's (EPA) James Hanlon (left), director of the Office of Wastewater Management; Benita Best-Wong, acting deputy director of the Office of Wetlands, Oceans, and Watersheds; and Jeff Lape, deputy director of the Office of Science and Technology. During the breakfast, Hanlon noted that EPA staff will be briefing Pete Silva, Assistant Administrator for Water and Lisa Jackson, EPA Administrator, on the results of the sanitary sewer overflow (SSO) listening sessions and public comment period held earlier this year. The briefing, which is expected to occur before the end of the year, will lay out recommendations on whether the Agency should proceed with developing a comprehensive SSO policy that addresses peak excess flow blending and collection system management issues.

The Chesapeake Bay and Gulf of Mexico restoration efforts and other nutrient-related issues were also topics of discussion at the NACWA-sponsored breakfast. EPA is currently developing a first of its kind TMDL for the Chesapeake Bay watershed but is indicating that it is not considering a similar approach at this time for the Gulf and Mississippi River basin – a much larger, more complex watershed.

New Paradigm for Wet Weather & Collection System Management Examined at NACWA's 2011 Winter Conference

NACWA's 2011 Winter Conference, *Understanding the New Paradigm for Wet Weather & Collection System Management*, is just around the corner. This year's Conference will take place February 1-4, 2011 at the Hyatt Regency Pier Sixty-Six in Ft. Lauderdale, Fla. Unlike past NACWA Winter Conferences, this conference will have a technical focus – with management issues being featured at the 2011 Summer Conference in Chicago.

The conference program will explore the increasing focus on wet weather issues for utilities resulting from the potential U.S. Environmental Protection Agency (EPA) rulemaking on sanitary sewer overflows (SSO), collection system management, and blending – as well as the major rule effort already underway for stormwater. Clearly, combined sewer system projects and collection system management are experiencing



greater scrutiny and broadened expectations. The conference will explore new approaches, including green infrastructure and low impact development techniques, generally heralded as cost-effective and environmentally-beneficial alternatives to traditional gray infrastructure. The agenda will examine difficulties that can arise with implementing these approaches and integrating them into existing regulatory programs.

Engaging satellite communities on collection system issues and dealing with privately-owned systems and laterals present major challenges whether the utility is situated in the Northeast or the arid Southwest – and will receive attention at NACWA's 2011 Winter Conference. Underlying all major collection system programs is the financial capability of the community and the existing burdens utilities are already facing for repair and replacement of aging infrastructure. New requirements will only further strain budgets. The conference program will build on NACWA's *Money Matters* campaign and include discussions about the multi-faceted, cooperative efforts underway to seek relief for clean water agencies. Look for more details about the conference in the next *Clean Water Advocate* and on the NACWA website at www.nacwa.org/meetings. ♦

2011 Water & Wastewater Leadership Center Now Accepting Applications

The *Water & Wastewater Leadership Center* is currently accepting applications for its 2011 session, March 6 – 18, 2011, at the Kenan-Flagler Executive Education Center on the campus of the University of North Carolina at Chapel Hill. The deadline for applications is December 10, 2010. With only 30 openings, space is limited, and those interested in attending are encouraged to submit their applications early.

Celebrating more than a decade of executive leadership training, the goal of the *Leadership Center* is to prepare and develop drinking water and clean water utility executives to address the range of management challenges they face in today's competitive environment. Established and offered through a joint venture between NACWA, the Association of Metropolitan Water Agencies (AMWA), the American Water Works Association (AWWA), and the

Water Environment Federation (WEF), the *Leadership Center* is a one-of-a-kind professional development program specifically designed to increase the leadership and management skills among utility CEO's, general managers, senior managers, and upper level management.

Students will enhance their decision-making skills and learn to lead confidently and think strategically. Through its 12-day residential leadership development program, the *Center* offers a unique opportunity for unlimited peer networking, a personal assessment of your leadership skills, and targeted curriculum that focuses on effective and efficient management practices. With its state-of-the-art facilities and exceptional faculty, the *Leadership Center* is consistently commended for the value it brings to its graduates and to the management of water and wastewater utilities.

Apply today! To obtain an application

to the *Leadership Center* or for additional information, visit NACWA's website (www.nacwa.org/leadershipcenter) or contact Kelly Brocato at 202/833-1449 or kbrocato@nacwa.org. ♦



NACWA Advocacy Efforts Strive to Ensure Federal Payment of Stormwater Fees

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member agency DC Water, GAO determined that because the DC Water IAC is a component of the utility rate charged to all customers for water and sewer service, it can be considered part of a reasonable service charge under the CWA and is thus payable by federal facilities. In making this determination, GAO focused heavily on the nexus between the IAC and the capital costs of the utility's Long-Term Control Plan. However, in a second letter sent to the District of Columbia Department of the Environment (DDOE), GAO indicated that it would not pay a very similar IAC assessed to cover the regulatory costs of complying with the city's municipal separate storm sewer system (MS4) permit, finding the charge to be an impermissible tax. GAO determined that because it does not receive any direct benefit from the DDOE stormwater IAC, and because the charge is designed to cover the costs of general "community benefits" and not specific regulatory costs, the DDOE

IAC qualifies as a tax not payable by federal facilities.

NACWA is very pleased with the GAO determination regarding the DC Water IAC, but is extremely disappointed in the decision regarding the DDOE IAC, and believes the refusal to pay this charge is in error. NACWA has long argued that stormwater fees based on impervious surface qualify as reasonable service charges under the Clean Water Act and the Association is committed to continued aggressive advocacy on behalf of its members on this issue. The Association is evaluating a number of responses to the GAO decision – including increased efforts to obtain a legislative solution in Congress – and has met with key Congressional offices to advance legislation already introduced in both the House and the Senate to address this critical issue. Additional information on these recent stormwater developments and NACWA's response is available in *Advocacy Alert 10-29* and on the *Stormwater*



Management section of the Association's webpage at www.nacwa.org. NACWA will continue to keep the membership updated on any developments. 🌊

NACWA Money Matters Campaign Gathers Momentum

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trust in municipal affordability determinations and investment decisions. The flyer advances several recommendations to move toward a solution and help put Clean Water Act regulation on a sustainable path:

1. Pursue a watershed-based approach to solve water quality challenges
2. Recommit to new technology and pioneering innovation
3. Entrust local experts and leaders to use limited dollars to maximize community benefit
4. Develop a rational, integrated approach to assessing community affordability

NACWA's advocacy has been focused around developing a consensus on these four recommendations with a short-term focus on the need to update the EPA outdated 1997 guidance on affordability and financial capability. NACWA has instrumental in a securing bipartisan letter from key members of the U.S. House of Representatives urging the leaders of the Transportation & Infrastructure Committee to recommend a review and revision of EPA's 1997 guidance. The Association is pursuing a similar letter in the Senate. At the same time NACWA is taking the *Money Matters* message to key EPA officials, including meetings with Deputy Administrator Bob Perciasepe and Assistant Administrator for Water Pete Silva. NACWA will also be distributing the *Money Matters* flyer widely and is encouraging its members and other key stakeholders to do so. 🌊

SAVE THE DATE March 1–2 *Money Matters* Summit & Fly-In

With a new Congress poised to take office, the first months of 2011 will provide a unique opportunity to help convey the clean water community's top national priorities. NACWA is seizing this opportunity by hosting a 1½ day Summit & Fly-In on March 1-2 focused on its *Money Matters* agenda. The day of information and advocacy will feature top national policy-makers and utility case-studies on the complex financial and affordability challenges being faced by communities from coast to coast and the solutions they need to have in place to maximize water quality benefit. The afternoon will be devoted to Capitol Hill visits, and attendees will reconvene on day two for a report out and debrief. There will be no fee to attend the *Summit* so save the date now to join us in D.C. in March! Additional registration information will be made available soon.