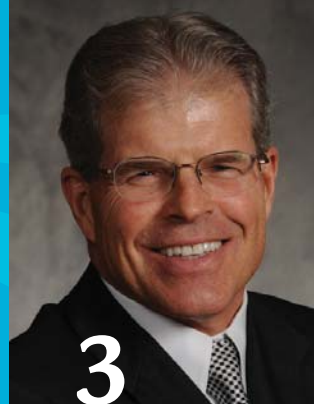


CLEAN WATER ADVOCATE

NACWA President, David Williams, Director of Wastewater for the East Bay Municipal Utility District, Calif. testified in February before the House Water Resources and Environment Subcommittee on the need for greater support of innovative projects taking place at utilities across the country.



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A Clear Commitment to America's Waters

FEBRUARY/MARCH 2012

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NACWA Acts Swiftly, Plans Intervention in Secondary Treatment/Nutrient Control Lawsuits

On March 23, NACWA's Board of Directors approved intervention by the Association in two recent lawsuits involving nutrient issues that could have significant impacts on NACWA members – and clean water utilities nationwide. This action on *Natural Resources Defense Council (NRDC) et al. v. EPA* and *Gulf Restoration Network (GRN) et al. v. EPA* paves the way for the Association to move forward aggressively and defend its members' legal interests in these two critical cases. NACWA anticipates filing its intervention papers within the next few weeks.

The Natural Resources Defense Council (NRDC) and a number of environmental activist groups filed two key lawsuits in March. The first, a federal [lawsuit](#) filed on March 13, challenges the U.S. Environmental Protection Agency's (EPA) failure to respond to a [2007 NRDC petition](#) requesting that the Agency add nutrient removal to the current Clean Water Act (CWA) secondary treatment requirements. A similar group of activist organizations filed a [second lawsuit](#) the same day in federal

court in New Orleans challenging EPA's recent denial of a [2008 petition](#) filed by non-governmental organization (NGO) groups, including NRDC, to establish numeric nutrient criteria for all waters nationwide where such criteria had not been developed but, at a minimum, to establish such criteria for all waters in the Mississippi River watershed and the Gulf of Mexico.

Impacts Possible for POTWs Nationwide

The outcome of these lawsuits could have significant impacts on NACWA Member Agencies and on all publicly owned treatment works (POTWs) nationwide, including a technology-based treatment limit for every wastewater treatment plant in the nation – regardless of a demonstrated water quality need. Such an outcome would come at an astronomical financial cost, with conservative NACWA financial estimates reaching in excess of \$280 billion nationally. An effort by EPA to establish numeric nutrient criteria for states in the Mississippi River watershed – comparable to what the Agency

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National Environmental Policy Forum to Examine Critical Clean Water Issues



As Washington ramps up for an election year, NACWA's [National Environmental Policy Forum](#) is well-timed, bringing together policy makers and clean water professionals to discuss the country's most urgent clean water issues. Held April 22 – 25 at the [Washington Marriott](#) in Washington, D.C., the *Forum* will examine the latest legislative, regulatory and legal issues confronting our country and its leaders today.

The *Policy Forum* will feature high level discussions and NACWA committee meetings on hot topic issues important to all Association members, including integrated planning and affordability, controlling agricultural run-off, opening

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NACWA Prominent at Integrated Planning Workshops, Files Comments on EPA Framework

Since hosting a multi-organization December 13 meeting in Washington where the U.S. Environmental Protection Agency (EPA) unveiled the elements of its integrated planning framework, NACWA has actively engaged the Agency to ensure the clean water community's perspectives are reflected in the final framework. The Association participated in five EPA workshops on the framework between January 30 and February 17, with Member Agency representatives at each workshop providing diverse perspectives on how an integrated planning framework could benefit their respective agencies – and the clean water community as a whole. Based on the discussions at each of the workshops, and input from the membership gathered during the NACWA Winter Conference, the Association filed written comments on EPA's framework on February 29.

NACWA's written comments on the framework commended EPA for listening to the clean water community and municipalities

nationwide who have raised concerns that the Agency was simply demanding too much, with every requirement being a top priority. At the same time, the Association expressed significant concern with the extent to which the framework will provide meaningful relief for the majority of its member agencies.

For those communities facing imminent federal enforcement, or perhaps are already in negotiations with the government, the framework will likely provide a pathway for the community to present a more locally-driven plan for meeting its obligations. But for many communities, the framework's promised flexibility may not be enough for them to embark on a costly and time-consuming planning effort without the certainty of it being approved. NACWA also noted that the framework remains focused on the sequencing of investments to meet current Agency policies, and does not contemplate a true cost-benefit approach to determining where community resources are best spent to achieve water qual-

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Senate Legislation Makes Biogas Eligible for Clean Energy Credits

In March, Senator Bingaman (D-N.M.), Chair of the Senate Energy & Natural Resources Committee, introduced S. 2146 [*The Clean Energy Standard Act of 2012*](#), legislation to promote energy generation from a diverse set of low-carbon energy sources by establishing a Clean Energy Standard (CES). A CES is a flexible, market-oriented standard that would set targets for clean electricity generation and ensure that clean energy would be produced where it makes the most economic sense and without favoring one source over another.

A growing number of NACWA's member utilities are generating energy from the biogas and biosolids produced during the wastewater treatment process. Instead of purchasing their energy entirely from outside sources, these facilities are able to generate some or all of their own clean energy. NACWA has been working to have the biogas and biosolids produced from the municipal wastewater treatment process credited under a CES. This approach would allow wastewater treatment plants that generate clean energy from these sources to be eligible to receive potentially valuable clean energy credits.

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Healthy Waters Coalition Releases Policy Recommendations



HEALTHY WATERS
COALITION

Since December 2010, a NACWA-led group of stakeholders from the water, wastewater, state regulatory, conservation and sustainable agriculture community has joined together to advocate for stronger links between national agricultural policy and water quality. The Healthy Waters Coalition and its effort, the Healthy Waters Initiative, resulted in consensus on a set of [policy recommendations](#) for Congress to include in the upcoming Farm Bill. These recommendations would begin to direct investments and

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Williams Testifies on Need for Federal Support as Utilities Take Lead on Innovation


David Williams, NACWA President and Director of Wastewater, East Bay Municipal Utility District (EBMUD) in Oakland, testified on February 28 on behalf of NACWA at the U.S. House of Representative's Water Resources & Environment Subcommittee's [hearing](#), *A Review of Innovative Financing Approaches for Community Water Infrastructure Projects*. The hearing focused on innovative financing tools, including public or private funding and investment mechanisms, such as federal loan guarantees, to better enable communities to help finance often large mandated wastewater and drinking water projects.

NACWA's testimony focused on the need for Congress to provide support for a more far-reaching approach to innovation as part of the Association's work on identifying the attributes of the water resources utility of the future. Williams recommended that, as utilities across the country engage in programs from energy conservation to resource recovery and water reuse, increasingly limited federal funding available should be used to help advance these innovations.

The [testimony](#) made an economic case for such investments and featured the food waste to energy recovery program at EBMUD as an example of the important and innovative work being done at utilities across the country. The hearing and NACWA's testimony also explored potential innovative financing tools, including the Subcommittee's draft legislation to create a "Water Infrastructure Finance and Innovation Authority" modeled after a similar loan guaranty authority in the Federal Highway Program. The draft legislation would also exempt water and wastewater facilities from the volume cap on private activity bonds.

The U.S. Environmental Protection Agency's (EPA) integrated planning program was also explored as a flexible approach that, if appropriately implemented, could prioritize cost-effective expenditures to achieve clean-water results. NACWA, however, kept the door open to a legislative fix if this effort did not sufficiently meet the needs of the clean water community. Williams received several questions from Subcommittee members regarding his testimony – as well as


statements from Reps. Eleanor Holmes Norton (D-D.C.) and Donna Edwards (D-Md.), thanking NACWA for its advocacy efforts to ensure passage of stormwater fee legislation and the introduction of green infrastructure legislation.

The U.S. Conference of Mayors, the American Water Works Association, the Water Environment Federation, the Water Infrastructure Network and two private sector witnesses also testified at the hearing. 



NACWA President, David Williams stands with Chairman Bob Gibbs (R-Ohio) of the House Water Resources & Environment Subcommittee after Williams' testimony before the Subcommittee on the need for greater support of innovative projects taking place at utilities across the country.

NACWA Busy in the Courtroom

There has been a flurry of activity in recent weeks involving a number of NACWA's ongoing legal advocacy efforts. Developments involve cases on judicial review of administrative orders, stormwater, sewage sludge incineration, and nutrient regulations. Summaries of these key litigation matters follow, and additional information is available on the [Litigation Tracking page](#)  of NACWA's website.

[Sackett v. EPA: The U.S.](#)

Supreme Court issued a unanimous ruling March 21 in the much-anticipated case of [Sackett v. EPA](#), finding that U.S. Environmental Protection Agency (EPA)-issued administrative orders (AOs) requiring compliance with the Clean Water Act (CWA) are entitled to pre-enforcement judicial review. This ruling is an important legal victory for

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NACWA in the Courtroom

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NACWA and the municipal clean water community. The High Court's decision echoes many of the arguments made in a [joint brief](#) filed last September by NACWA and a number of coalition partners encouraging the Court to allow for immediate judicial review of AOs. The decision is important because it will allow utilities that receive AOs, and have concerns about the underlying validity of the order, to now move for immediate judicial review of the AO – before EPA begins formal enforcement proceedings. The ability of clean water utilities to now immediately challenge these compliance orders should help to curb EPA's use of AOs to coerce action from public water agencies. NACWA is pleased with the court's ruling and believes that it will benefit members who are currently dealing with federal AOs or will be in the future.

United States v. Cities of Vancouver and Renton

NACWA submitted a [brief](#) February 9 to a federal court in Washington State supporting a municipal legal challenge against the U.S. Department of Justice (DOJ) over unpaid stormwater charges from a federal government facility. NACWA's brief argues that a recent amendment to the Clean Water Act (CWA) clarifying federal responsibility for payment of municipal stormwater charges also requires payment of past due amounts assessed prior to the bill's passage. The brief focuses on the legislative history accompanying the amendment to support the argument that Congress intended for the bill to mandate payment of past-due stormwater charges from federal properties. Additionally, the brief provides an important national perspective on the impact the ruling in the case could have on municipal stormwater agencies elsewhere in the country.

NACWA v. EPA

NACWA learned in early February that the U.S. Environmental Protection Agency (EPA) is planning to officially deny the Association's administrative petition for reconsideration of the Agency's recent sewage sludge incineration (SSI) rule. While NACWA is disappointed with this action, it is not entirely surprising given EPA's indication last August that it would likely deny the Association's request. Since this denial occurred before the start of briefing in NACWA's parallel legal challenge, the Association will now be able to incorporate EPA's denial of reconsideration into the legal case. Briefing has accordingly been delayed to account for this development, and a revised briefing schedule will be submitted to the court no later than June 1. NACWA is hopeful that opening merits briefs will be filed soon thereafter, with all briefing completed by late 2012.

Upper Blackstone Water Pollution Abatement District v. EPA

A federal appeals court held oral arguments January 12 in a case involving contested nutrient limits from a municipal discharge permit, and expressed significant reservations with U.S. Environmental Protection Agency (EPA) actions. The case involves a challenge by NACWA member agency the Upper Blackstone Water Pollution Abatement District (Millbury, Mass.) to inappropriate nutrient controls in the utility's permit. The court indicated strong concern that EPA had failed to take into account appropriate modeling and scientific data, echoing arguments made by NACWA in a November 2011 supporting [brief](#). 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.

Florida Wildlife Federation v. EPA

A much-anticipated [ruling](#) in litigation over U.S. Environmental Protection Agency (EPA) federal nutrient criteria for Florida was released on February 18, when a federal court struck down key elements of the criteria while at the same time upholding the Agency's decision to impose federal criteria in place of existing state standards. The ruling is consistent with arguments made by NACWA in a [brief](#) filed last June that contested the scientific basis for EPA's nutrient limits. However, the court also dismissed all challenges to EPA's federalization of Florida's criteria, finding that EPA acted properly in replacing the existing state narrative approach with federal numeric criteria. This decision runs counter to arguments made by NACWA and others that EPA violated the Clean Water Act (CWA) and illegally usurped the state's primary role in setting water quality standards. NACWA is concerned about this decision's potential national precedent in other states where EPA may seek to federalize criteria, and will closely monitor developments. 💧



NACWA's 2012 Winter Conference



NACWA's 2012 Winter Conference, February 12 - 15, 2012 in Los Angeles, Calif. brought together NACWA President, David Williams (left); Craig Goehring, Chief Executive Officer of Brown and Caldwell (center) and Alan Krause, President and Chief Executive Officer of MWH Global (right) to discuss their insights into market signals regarding the economy, innovative solutions here and abroad that might

help clean water agencies tackle the new regulatory frontier, and new models for collaboration that are stretching limited public dollars. From panel discussions on "Nutrients and the Role of Trading" to "Managing One Water — What Role Will Stormwater Play," new ideas about the evolving and expanding role of the Nation's clean water agencies in advancing innovation were front and center.

National Environmental Policy Forum

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affordability, controlling agricultural run-off, opening renewable energy markets, and innovative financing for clean water investments. Key Congressional and U.S. Environmental Protection Agency (EPA) officials will be among those speaking and attending, ensuring that members come away with the maximum amount of information on issues sure to impact their utility back home.

Utility Executives Roundtable to Explore the Water Resources Utility of the Future

The *Policy Forum* will include a *Utility Executives Roundtable* that will shine a bright light on the transformational shift in how wastewater utilities are effectively managing their systems, while also addressing issues like population growth, climate change and energy independence. Several utilities will highlight the resource-recovery projects they are undertaking and the factors behind their decision to proceed. A dialogue among all in attendance is planned. While the evolution of these wastewater utilities can help communities with their long-term sustainability goals, the shift demands a serious look at the Clean Water Act and whether the Act should be amended to address and embrace the transformational change taking place at these facilities.

Senator Ben Cardin to Keynote

Senator Ben Cardin, Chair of the Senate Subcommittee on Water

& Wildlife, will be delivering a keynote address at the Policy Forum. Serving in Congress for over 25 years, Senator Cardin has developed a strong reputation as an environmental champion through his efforts to provide dedicated funding to water infrastructure systems and through his consistent pursuit of environmental restoration initiatives. The Senator will speak on advancing the national dialogue on increased investments in water infrastructure. Invited Congressional speakers include Senator Debbie Stabenow (D-MI), member of the Senate Energy & Natural Resources Committee and Congressmen Bob Gibbs (R-Ohio) and Tim Bishop (D-NY), Chairman and Ranking Member of the House Water Resources and the Environment Subcommittee.

Member Agency Hill Visits Planned

The *Policy Forum* agenda includes time for Member Agencies to meet with their Congressional delegations to raise issues of significance to their utility – and NACWA members as a whole. Policy Forum attendees are encouraged to schedule these critical meetings now.

Registration information and an up-to-date agenda are available on the 2012 *National Environmental Policy Forum's* [page](#) of NACWA's website. ♡

NACWA Intervention in Nutrient Lawsuit

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recently did in Florida – would have equally concerning economic ramifications for impacted POTWs. It would also set a very negative precedent for municipal discharges in all other parts of the country.

According to the U.S. Geological Survey and the Environmental Protection Agency's water quality data, the majority of nutrient pollution impairing our waterways is generated by run-off and groundwater leaching from farm fields. Numerous studies have shown that the dominant source of nutrient pollution causing dead zones in the Gulf of Mexico and elsewhere is farms. While wastewater treatment plants are a source of nutrients, they account for less than 10% of the

nutrients flowing to the Gulf of Mexico. "Wastewater treatment agencies stand ready to do their part in addressing the nutrient challenge in watersheds in which treatment upgrades will have an impact. However, costly litigation that seeks to impose stringent, costly and one-size-fits-all controls on ratepayers nationwide is simply a waste of resources and perpetuates the myth that this strategy will be effective in addressing nutrient pollution—it won't," NACWA Executive Director, Ken Kirk explained. NACWA will respond to these lawsuits aggressively and will ensure a coordinated legal, legislative, regulatory and media response. ●

NACWA Honors Agencies as National Environmental Achievement Award Winners



NACWA recognized eighteen Member Agencies with National Environmental Achievement Awards (NEAA) at a ceremony on February 13, 2012 – during the Association's Winter Conference, Watershed Moment in the Making...Conquering the Challenges of the New Regulatory Frontier, in Los Angeles, Calif. The NEAA Awards recognize Agencies in four categories – Research & Technology, Operations & Environmental Performance, Public Service, and Public Information & Education.

Pictured left, NACWA President, David Williams, Director of Wastewater for the East Bay Municipal Utility District, Calif., presents King County Department of Natural Resources and Parks, Wash. Director of the Wastewater Treatment Division, Pam Elardo with King County's NEAA Award for their Brightwater Treatment System Initiative.

NACWA congratulates all of these NEAA winners on their clear commitment to clean water and a safe, sustainable environment. NEAA Awards will be presented to individual honorees in April at the Association's National Environmental Policy Forum. For more information on NACWA's awards programs please visit www.nacwa.org/awards.

Integrated Planning Workshops

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Legislative Fix Needed for Watershed-Based Approach

Although NACWA continues to believe that a legislative fix will be needed to establish a more holistic, watershed-based approach, the framework does present a valuable opportunity to see what more can be done to address the concerns within the current bounds of EPA's policies and the Clean Water Act. NACWA's comments express the Association's commitment to explore whether the approach contemplated by EPA can succeed, and its willing-

ness to work with the Agency and communities interested in integrated planning.

EPA plans to revise the framework based on the input from the workshops and release an updated version by the end of March. NACWA will be meeting with EPA as it works to revise the framework and will be working with its members to identify potential case study communities interested in using the integrated planning framework. ●

Heathy Waters Coaliton

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provide stronger tools to the U.S. Department of Agriculture (USDA) for greater progress toward reducing nutrient pollution from agricultural sources. Nearly [ninety organizations](#) across the country have formally endorsed the recommendations.

The Healthy Waters Coalition unveiled these recommendations at a [press conference](#) at the National Press Club on March 6. At the event, Ron Kreider, a Pennsylvania farmer, made the case for why farmers should do more to reduce their impacts on water quality and why he made a commitment to do so because of the impact his operations were having on the Chesapeake Bay. Former USDA Secretary Ed Schafer participated and explained that technology and best management practices exist to tackle this issue.

Also participating in the event were NACWA Member Agency representatives Kevin Shafer, Executive Director of the Milwaukee

Metropolitan Sewerage District, Wisc. and Steve Hershner, Utilities Environmental Manager of the City of Cedar Rapids, Iowa. The Association of State Drinking Water Administrators (ASDWA) and the Association of Clean Water Administrators (ACWA) provide a state perspective, and the Association of Metropolitan Water Agencies (AMWA) reinforced the concerns of the drinking water community. The NGO community also provided their perspective, including the National Sustainable Agriculture Coalition (NSAC), the Water Environment Federation (WEF), the Clean Water America Alliance (CWAA), the Environmental Working Group (EWG) and American Rivers. The event demonstrated the broad array of stakeholders that recognize that without significant reductions by agricultural operators, nutrient pollution in our waterways will continue to be a significant water quality challenge. 💧

NACWA Releases Nutrient Report

In a report released March 6 NACWA suggests that to improve water quality and tackle the problem of excessive nutrient pollution in our waters, the Nation needs to look toward the agricultural sector for more affordable approaches to this issue. [Controlling Nutrient Loadings to U.S. Waterways: An Urban Perspective](#), produced with support from the Water Environment Federation (WEF) and the Turner Foundation, expresses the view that the nation has not paid sufficient attention to agricultural sources of nutrients, especially compared to the direct regulatory focus on reducing nutrients from municipal point sources.

According to the U.S. Environmental Protection Agency (EPA), nutrients (nitrogen and phosphorus) are significant sources of impairment of rivers, streams, lakes, reservoirs, estuaries, and coastal waters of the United States. These impairments are leading to unhealthy aquatic ecosystems, a reduction in water-based recreation and property values, compromised drinking water quality, and the loss of commercial fisheries and shellfisheries.

The report asserts that it is far more economical to control agricultural runoff compared to additional reductions from urban point sources. The cost to remove a pound of nitrogen or phosphorus from farm runoff and drainage is typically 4 to 5 – and sometimes up to 10 to 20 – times less than the cost to remove the same amount from municipal wastewater or stormwater.

Energy Legislation

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Bingaman's CES bill includes energy produced from biogas, including biogas produced as part of the municipal wastewater treatment process, making it eligible for clean energy credits. However, energy produced using biosolids as a separate feedstock, for example as a supplement to cement kilns, was not included and NACWA's efforts going forward on this issue will revolve around making sure it is added.

Precedent for Future Energy Legislation Set

Senator Bingaman has acknowledged that it may be difficult to move this legislation through Congress during this election year. Still, having energy from biogas and biosolids included as clean energy in this bill would set a precedent for future clean energy legislation as well as provide some momentum to wastewater treatment utilities that are

advancing clean energy production projects in their communities. NACWA's commitment to this issue aligns with work the Association is undertaking to explore the water resources utility of the future, which looks at the transformational shift in how public clean water agencies are managing their systems and becoming energy recovery agencies in addition to complying with the requirements of the Clean Water Act (*see related article on page 1*). The Association will provide members with updates on the CES as they occur. 💧

NACWA, One Voice for Clean Water – Your Voice

NACWA is the advocacy organization representing the interests of the clean water community. The Association's expanding membership creates a stronger voice and a more influential advocacy initiative. The Association proudly welcomes thirteen new and re-joining members in each of its membership categories – six Public Agencies; three Corporate Affiliates; three Legal Affiliates and one Supporting Affiliate.

Public Agencies

Los Angeles County Department of Public Works, CA

Represented by Diego Cadena, Deputy Director

Returning to NACWA membership is the Los Angeles County Department of Public Works, a collection system and municipal stormwater agency serving a population of 200,000.

Victor Valley Wastewater Reclamation Authority, CA

Represented by Logan Olds, General Manager

The Victor Valley Wastewater Reclamation Authority serves a population of 275,000 as a regional treatment facility dedicated to taking the waste out of wastewater.

East Baton Rouge Sewerage Commission, LA

Represented by Mark LeBlanc, Assistant Public Works Director

The East Baton Rouge Sewerage Commission serves a population of 440,000 as a County Authority that acts as a treatment facility, collection system, and interceptor.

City of Gloucester, MA

Represented by Suzanne Egan, General Counsel

The City of Gloucester provides collection system, interceptor, treatment, reuse, municipal stormwater and drinking water services to a population of 35,000 residents.

City of Worcester, MA

*Represented by Robert Moylan,
Commissioner of Public Works and Parks*

The City of Worcester provides collection system, interceptor and municipal stormwater services to a population of 175,000.

City of Liberty, MO

Represented by Charles Stevens, Utility Director

The City of Liberty is a collection system and interceptor that provides service to a population of 29,200.

Corporate Affiliates

Hazen and Sawyer, P.C.

Represented by Alan Carter, Midwest Client Development Director

Another returning member, Hazen and Sawyer is an environmental engineering consulting firm that specializes in wastewater, stormwater, combined sewer overflows, biosolids & residuals, and reclamation & reuse solutions.

NACWA's most powerful recruitment tool is its members. Sharing your membership experience with potential members is one of the most effective ways to communicate the value of membership. The Association thanks all who have shared the many benefits of membership with a colleague. If you are aware of a clean water agency or organization that would benefit from NACWA membership, please contact Kelly Brocato, Director, Membership Development at kbrocato@nacwa.org.

NEFCO, Inc.

Represented by Larry Bishop, Vice President

NEFCO is a trusted leader in biosolids management committed to operating facilities that make economic sense while remaining environmentally sound.

Shaw Environmental & Infrastructure

Represented by Jack Baylis, Senior Vice President

Shaw Environmental & Infrastructure provides environmental protection and remediation services, as well as comprehensive engineering, design and construction services.

Legal Affiliate

Best, Best & Krieger LLP

Represented by Eric Garner, Managing Partner

Best, Best & Krieger LLP is a full-service law firm with more than 200 attorneys in eight offices across California and an office in Washington, D.C.

Lathrop & Gage LLP

Represented by Aimee Davenport, Attorney at Law

Headquartered in Kansas City, MO, Lathrop & Gage LLP provides a broad spectrum of services, including an extensive environmental practice.

Reed Smith LLP

Represented by Greg Jacobs, Associate

With lawyers from coast-to-coast in the United States, as well as in Europe, Asia and the Middle East, Reed Smith is known for its experience across a broad array of industry sectors.

Supporting Affiliate

American Biogas Council

Represented by Patrick Serfass, Executive Director

The mission of the American Biogas Council is to create jobs, environmental sustainability and energy independence by growing the American biogas industry.