

May 6, 2014



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Inaugural Water Week 2014 Highlights Water Sector Collaboration – Join us in 2015

In April, NACWA joined with the Water Environment Federation (WEF) and the Water Environment Research Foundation (WERF), the Association of Metropolitan Water Agencies (AMWA) and the U.S. Water Alliance, and over 25 other state and regional water organizations from across the country for the inaugural [Water Week 2014](#). Hundreds of water and wastewater professionals participated in the successful week of events advocating for clean water priorities, showcasing innovative approaches to sustainable water management, and educating national leaders about the importance of clean water to public health, the environment and a strong economy. Many thanks to those state groups that joined us from Kentucky/Tennessee, New England, New York, the Pacific Northwest, and Texas.

NACWA is excited to announce that **Water Week 2015 will be held April 12-18 in Washington, D.C.** and should be a fabulous opportunity to build on this year's successful collaboration!

EPA Defers National Stormwater Rulemaking, Denies RDA Petitions

EPA made two significant announcements in March regarding key national stormwater issues. EPA's Office of Water released an official statement that they are deferring development of a National Post Construction Stormwater Rule in lieu of more targeted, less regulatory-driven efforts to help municipalities better control stormwater runoff. In a statement to the press, EPA explained they are "...updating [their] stormwater strategy to focus now on pursuing a suite of immediate actions to help support communities in addressing their stormwater challenges and deferring action on rulemaking to reduce stormwater discharges from newly developed and redeveloped sites or other regulatory changes to its stormwater program."

In short, the Agency is officially acknowledging that continued work on a new national stormwater rule does not make economic or regulatory sense at this point. In many ways this news is not unexpected, as there had been very little

progress on the rule over the past few years and EPA missed its most recent draft proposal deadline in June 2013. NACWA has aggressively advocated with EPA on the stormwater rule since 2009 and our advocacy played a part in helping guide the agency to the conclusion that a new national stormwater rule is not appropriate at this time.

Regions Deny RDA Petitions

Also on the stormwater front, three petitions submitted by NGO groups to EPA Regions 1, 3, and 9, requesting they use their residual designation authority (RDA) to permit unregulated stormwater discharges into impaired waters were denied. EPA has authority under CWA Section 402(p)(2)(E) – also known as RDA – to issue individual permits directly to these specific dischargers. Each of the three regions denied the petitions, with Region 3 denying them outright; Region 1 limiting consideration of the RDA on a watershed scale consistent with their existing policies; and, Region 9 continuing to evaluate unregulated sources of stormwater runoff for potential designation as part of its ongoing stormwater program. The Regions' complete responses can be found on the NACWA [website](#). Though NACWA held a position that the petitions were worthy of consideration, their denial assuages concerns with how the RDA approach would be implemented and avoids any potential unintended consequences for MS4s. Though the petitions were denied, they seem to have elevated the dialogue around exercising RDA to a national level.

NACWA will continue to engage with EPA as it pursues new avenues to address stormwater issues, and we will ensure the municipal clean water perspective is actively represented in those discussions. We will also monitor any reactions to EPA's decision, including any possible legal action from the environmental activist community.

Input Sought on EPA's Draft Waters of the U.S. Rule

The EPA and the U.S. Army Corps of Engineers released a [draft](#) Waters of the U.S. (WOTUS) rule which addresses the jurisdictional reach of the Clean Water Act (CWA). The rule's 90-day public comment period began April 21st when it was officially published in the *Federal Register*. In an important development for NACWA utility members, the proposal maintains the existing waste treatment system exemption that exists in EPA's current regulations. This means that treatment ponds, lagoons, or other waterbodies used by NACWA members as part of a waste treatment system to meet the requirements of the CWA will continue to be exempt from jurisdiction. Additionally, the proposal includes a new, explicit exemption for groundwater from CWA regulation. The Association will be conducting an in-depth review and analysis of the proposal over the coming weeks and will be submitting comments on the draft rule. The rule does seek to expand EPA's regulatory reach under the CWA, especially with regard to upstream tributaries and wetlands, and NACWA will be evaluating potential impacts on the municipal clean water community. If your organization plans on submitting comments on the draft WOTUS rule, please consider sending a copy along to Brenna Mannion, Manager of Regulatory Affairs, at bmannion@nacwa.org.

NACWA Joins State Groups to File Brief in Key Daily Loads Case

NACWA and a number of municipal wastewater partners, including Virginia Association of Municipal Wastewater Agencies (VAMWA) and the Maryland Association of Municipal Wastewater Agencies (MAMWA), filed a [brief](#) April 21 with a federal appeals court in litigation over the Chesapeake Bay total maximum daily load (TMDL), strongly endorsing the use of a watershed approach in achieving water quality improvement. NACWA's brief, filed with the U.S. Court of Appeals for the Third Circuit in *American Farm Bureau, et al. v. EPA*, seeks to defend and affirm a lower federal court ruling that upheld the TMDL and its inclusion of nonpoint source allocations. The TMDL has been attacked by agricultural and development interests unhappy with its specific requirements for nonpoint source dischargers.

NACWA's brief, filed in response to an appeal lodged by the nonpoint source interests to the lower court decision, reaffirms the Association's commitment to defending a holistic watershed approach as the most equitable, cost-effective, and environmentally responsible way to achieve water quality improvement. The brief argues that EPA's inclusion of nonpoint sources in the TMDL was both legal and appropriate, and disputes arguments by TMDL opponents that it will result in federal control over local land use decisions. Most importantly, the brief emphasizes the importance of addressing all sources of impairment – both point and nonpoint source – as the only way to make

meaningful water quality advancements. This is especially true in waterbodies like the Chesapeake Bay which are dominated by nonpoint sources of pollution.

This is an excellent example of how state clean water organizations and NACWA can leverage their capabilities to advocate for holistic approaches to water quality. The next big case may be in your backyard, so please keep in touch with NACWA on any interesting legal actions developing in your region.

Contact Your Representatives on Key Legislative Issues: Clean Water Caucus, Affordability Legislation

The bipartisan Clean Water Caucus has been gathering momentum in Congress since NACWA announced its formation in February. The Caucus is being chaired by Representatives John Duncan (R-TN) and Timothy Bishop (D-NY), the former chair and current ranking member of the House Transportation & Infrastructure Subcommittee on Water Resources & Environment. Representatives that have joined the growing list of Caucus members include Representatives Mark Pocan (D-WI), Paul Cook (R-CA), Brad Schneider (D-IL), Ann McLane Kuster (D-NH) Michelle Lujan Grisham (D-NM), Phil Roe (R-TN), and Collin Peterson (D-MN).

NACWA encourages you to reach out to your Representatives urging them to join the Congressional Clean Water Caucus, which is focused on *Water Resources Utility of the Future* (UOTF)–related efforts. NACWA has prepared a caucus [template letter](#) for your use in reaching out to your Members of Congress to request their participation in the Caucus. If your Members would like to sign on, have their staff contact either Don Walker in Rep. Duncan’s office (don.walker@mail.house.gov or 202-225-5435) or Eddie Shimkus in Rep. Bishop’s office (eddie.shimkus@mail.house.gov or 202- 225-3826).

Another key legislative priority to discuss with your Members of Congress is H.R. 3862, *The Clean Water Affordability Act*, which was introduced by Representatives Bob Latta (R-OH) and Tim Walz (D-MN) in February. The legislation helps financially challenged communities advance clean water projects while minimizing the financial impacts on ratepayers and municipal budgets. Specifically, the bill would codify the EPA’s integrated planning framework and extend permit terms up to 25 years for communities with approved integrated plans; require the Agency to broaden its financial capability determinations; extend the repayment period on Clean Water State Revolving Fund (CWSRF) loans to 30 years; authorize additional subsidization such as principal forgiveness for communities that meet the affordability criteria; and ensure that small communities receive a portion of available funding under the CWSRF. NACWA encourages you to distribute this announcement to your members and ask them to contact their Member(s) of Congress to cosponsor this legislation. A [template letter](#) makes it very easy!

State Groups Invite NACWA to Spread National Clean Water Message

NACWA provided remarks in February at the Kentucky-Tennessee Water Environment Association’s Watersheds Conference in Nashville, Tenn., providing a national update on advocacy issues impacting clean water agencies. Over 100 clean water professionals from the Kentucky-Tennessee region participated in the conference, which examined a variety of watershed approaches being pursued by utilities to address issues such as wet weather overflows, stormwater, and nutrients. NACWA used its participation to highlight some of the Association’s current advocacy priorities such as encouraging integrated planning, strategic negotiations in wet weather enforcement, the pursuit of holistic watershed solutions, and advancing the Utility of the Future initiative.

NACWA also partnered with the Colorado Wastewater Utility Council (CWUC), Colorado Stormwater Council (CSC), and Rocky Mountain Water Environment Association, in collaboration with EPA, to offer a Region 8 Integrated Planning (IP) Workshop on March 31 in Denver, Colorado. The Workshop brought together key stakeholders – including regulators from states in the Region, EPA Headquarters and Regional staff, and the utility community – for a candid discussion of [Integrated Planning Framework](#) implementation. As the seventh in a series of regional workshops which have garnered impressive attendance, the Region 8 Workshop resulted in a dynamic discussion of permit/enforcement issues, barriers, and lessons learned. We are seeking partners with whom to cohost Region 4

and Region 6 workshops.

NACWA always appreciates the opportunity to participate in regional clean water conferences and events. Those interested in learning more about NACWA's state and regional outreach efforts may contact Brenna Mannion, at bmannon@nacwa.org.

Please feel free to contact Brenna Mannion with any questions or concerns at bmannon@nacwa.org.