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Legal Analysis of Stormwater Program Fee Available

NACWA released its newest resource, *Navigating Litigation Floodwaters: Legal Considerations for Funding Municipal Stormwater Programs*, during the [National Clean Water Law Seminar](#) in November 2014. This white paper provides analysis of the types of legal issues impacting stormwater funding programs.

It is estimated that one fourth of all Phase I municipal separate storm sewer system (MS4) permits and half of all Phase II MS4 permits are expired and due for renewal. The regulatory landscape with regard to MS4s will shift rapidly as these permits are renewed. As permit requirements become increasingly more onerous, local governments will need even more revenue and rate increases to keep pace. An increase in MS4 fees may also lead to increased legal challenges to municipal stormwater funding programs, and utilities need to be fully aware of these potential issues.

NACWA's white paper contains critical knowledge and tools to address these legal challenges, and will inform and prepare utilities that are creating, implementing or defending a stormwater program, utility or fee. Please contact Amanda Waters at awaters@nacwa.org if you would like a copy.

Center for Disease Control Releases Interim Ebola Guidance for POTW Workers

The Center for Disease Control and Prevention (CDC) released its much-anticipated [Interim Guidance for Managers and Workers Handling Untreated Sewage from Individuals with Ebola in the United States](#) in November 2014. While noting that the risk to wastewater treatment plant workers is very low, the interim guidance is meant to

help reduce and minimize the workers' risk of exposure to infectious agents including the Ebola virus when working with untreated sewage. The guidance provides recommendations for workers on the types of personal protective equipment to be used and proper hygiene for safe handling of untreated sewage from hospitals, medical facilities, and other facilities with confirmed individuals with Ebola.

NACWA Supports State Groups in Biosolids, Stormwater Litigation

NACWA's joined a number of local groups in legal advocacy over the holidays. On December 23 NACWA submitted a [brief](#) with the Pennsylvania Supreme Court in *Gilbert v. Synagro*, a case addressing whether the land application of biosolids is an agricultural activity that is protected under 'right to farm' laws.

The Association's brief, submitted jointly with the Pennsylvania Municipal Authorities Association (PMAA) and NACWA member the Allegheny County Sanitary Authority (ALCOSAN), argues that land application of biosolids is a highly regulated activity which qualifies as a normal agricultural operation and deserves the protection of right to farm statutes. Ensuring that land application is considered a normal agricultural practice under right to farm laws is critical for clean water utilities because it provides land application programs with additional legal protection from lawsuits challenging the practice, similar to protections enjoyed by other agricultural fertilizers.

NACWA also joined with a number of other interested parties, including New York state groups, on a [brief](#) submitted by the City of New York to the Court of Appeals of New York in litigation over the appropriate regulatory requirements in municipal stormwater discharge permits. The joint brief in *Natural Resources Defense Council v. New York Department of Environmental Conservation* focuses on the proper application of the "maximum extent practicable" (MEP) standard for municipal stormwater under the Clean Water Act. The brief provides a robust and spirited defense of the MEP standard against challenges from environmental activist groups. In particular, the brief argues that MEP is a unique standard created for municipal stormwater that does not require strict compliance with water quality standards nor requires numeric permit limits, but instead allows necessary flexibility for site-specific stormwater controls based on cost-effectiveness. The New York Court of Appeals this week dismissed the appeal, ensuring that a very positive lower court decision in the matter will stand. A lower court had already ruled in the case that the MEP standard does not require strict compliance with water quality standards in stormwater permits, marking an important win for municipal clean water interests.

As always, please let Nathan Gardner-Andrews, NACWA's General Counsel, know if there are clean water legal matters in your state that would benefit from NACWA's national legal advocacy support.

Utility Leaders, Nationwide, Express Concern with Whole Foods Policy

Clean water utility General Managers and Directors from across the country signed onto a [letter](#) this week expressing concern with a new policy of the national grocery chain, Whole Foods Market. The Whole Foods *Responsibly Grown Produce Rating System* consists of a number of metrics to evaluate the sustainability of the practices used in growing conventional and organic produce sold at its stores and includes a requirement prohibiting the use of biosolids *of any quality* within three years of harvest. NACWA is concerned that such a policy from a nationally recognized business could perpetuate fear-based claims that biosolids are unsafe. The letter expresses concern with the policy and requests further dialogue on the issue. Organizations in those [states](#) with a Whole Foods presence may want to consider filing a similar letter with the company.

New EPA Stormwater Permit Guidance Addresses Numeric Limits

EPA's Office of Water issued a revised version of its controversial 2010 stormwater memo on November 26, 2014. Intended to provide guidance to states and EPA Regions on permitting approaches for stormwater discharge permits, the revised memo incorporates a number of changes that are largely positive and were made in direct response to concerns raised by NACWA. The memo, [Revisions to the November 22, 2002 Memorandum "Establishing Total Maximum Daily Load \(TMDL\) Wasteload Allocations \(WLA\) for Storm Water Sources and NPDES Permit Requirements Based on Those WLAs](#), is an update of an earlier version originally released by EPA in November 2010.

NACWA's original concerns with the November 2010 memo were clearly considered by EPA and the Association is pleased with the modifications that have been made, as well as the memo's acknowledgment of integrated planning. There are still stormwater permit policies left to be clarified, especially with regard to numeric permit limits, but overall this memo demonstrates a positive shift in the Agency's approach. The major changes in the memo are the omission of surrogates such as flow, a noticeably toned-down approach to numeric limits, and a focus on effective waste load allocation translation to permit limits.

Leave Your 'Comfort Zone' — Join NACWA at the 2015 Winter Conference

Join your clean water colleagues, February 1 – 4 in beautiful Charleston, South Carolina, for NACWA's Winter Conference, [Leaving the Comfort Zone... Collaborating for Clean Water](#). The municipal water and wastewater community is beginning to carve an innovative path for addressing issues by collaborating with non-traditional partners – from the agriculture, finance, energy, reuse and product stewardship sectors to name a few. [Hotel information](#), a [conference agenda](#), and [registration](#) are currently available.

The National Water Quality Trading Alliance (NWQTA) will also offer a program following the Conference program on Wednesday, February 4 from 12:00 – 2:00 pm. This lunch will include a presentation on the state of water quality trading markets across the U.S. – with a particular emphasis on opportunities for point source credit purchasers – and the NWQTA's efforts to enhance and expand these markets. NWQTA invites you to [RSVP](#) today!

