



January 3, 2014

### Key Topics

- [NACWA, Other Associations Urge EPA to Apply Blending Decision Nationwide](#)
- [Utility of the Future Congressional Clean Water Caucus Established](#)
- [Key Legal Developments: Federal Court Dismisses Challenge to Water Quality Trading and State Invalidates Stormwater Fee Program](#)
- [Bipartisan Voluntary Clean Water Trust Fund Legislation Introduced](#)
- [Executive Order and EPA Adaptation Plans Address Resiliency, Climate Impacts](#)
- [Legislation Reintroduced to Promote Use of Innovative Stormwater Infrastructure; EPA Announces 2014 Technical Assistance Funds](#)
- [NACWA Partners with Regional Groups to Host Two Local Events](#)
- [USCM, NACo, NLC Lead Municipal Group Discussion on Affordability with EPA](#)

---

## NACWA, Other Associations Urge EPA to Apply Blending Decision Nationwide

A March 2013 decision by the Eighth Circuit Court of Appeals in *Iowa League of Cities v. EPA* found that EPA's blending prohibition, which restricted how municipalities could design facilities to address peak flow processing, exceeded the Agency's statutory authority under the Clean Water Act (CWA) and was inconsistent with both EPA's secondary treatment rule and bypass rule.

At NACWA's *National Clean Water Law Seminar*, November 20-22, 2013, EPA's Acting Assistant Administrator for Water Nancy Stoner stated that EPA believes the decision only has binding legal effect within the geographic area covered by the Eighth Circuit Court of Appeals. This includes the states of Arkansas, Missouri, Iowa, Nebraska, Minnesota, North Dakota, and South Dakota, which are in four different EPA Regions. Stoner indicated that outside of the Eighth Circuit, EPA will evaluate the use of blending on a case-by-case basis. Stoner further noted that EPA will consider a permittee's unique circumstances – as well as all other applicable legal decisions – when determining what is appropriate for CWA compliance regarding blending in states outside the Eighth Circuit.

NACWA joined with other municipal organizations in November 2013 – including the National League of Cities, the U.S. Conference of Mayors, and the National Association of Counties – to send a [letter](#) to EPA requesting clarification on how the Agency will implement the decision. NACWA believes the ruling does have national applicability and will strongly resist any efforts by EPA to limit the case only to the Eighth Circuit. In order to help inform NACWA's advocacy on this issue, **the Association would like to hear from anyone who**

has been told verbally or in writing by state or EPA regional officials that the decision does not apply in their particular state or region.

---

## Utility of the Future Congressional Clean Water Caucus Established

The *Congressional Clean Water Caucus* was officially [established](#) in November 2013 in the 113th Congress, by Representatives John Duncan (R-TN) and Timothy Bishop (D-NY). Rep. Duncan is a former chair of the House Transportation & Infrastructure Subcommittee on Water Resources & Environment and Rep. Bishop is the Subcommittee's current Ranking Member. As called for in [The Water Resources Utility of the Future... A Blueprint for Action](#), the bipartisan *Caucus* will bring focus to Water Resources Utility of the Future (UOTF) priority issues and spotlight cutting-edge technologies and innovative techniques and approaches in the clean water sector.

NACWA appreciates the leadership of Representatives Duncan and Bishop on the formation of the *Caucus*, and will be working with them to circulate a "Dear Colleague" letter to encourage additional Members of Congress to join the *Caucus*. NACWA expects this letter to be circulated before the end of January and will circulate it to the Exchange list as soon as it is available, and **would ask you to encourage your local representatives to join the *Caucus*.**

---

## Key Legal Developments: Federal Court Dismisses Challenge to Water Quality Trading and State Invalidates Stormwater Fee Program

A federal district court in Washington, DC issued a ruling Dec. 13 dismissing a legal challenge to the water quality trading provisions in EPA's final total maximum daily load (TMDL) for the Chesapeake Bay watershed and nationwide. The court dismissed the case because the environmental activist groups that filed the [litigation](#) did not have legal standing to bring the challenge and because the provisions of the TMDL discussing trading did not qualify as final agency action.

NACWA joined with a number of other municipal organizations to intervene in the litigation earlier this year in defense of water quality trading programs, and is pleased the court has dismissed the legal challenge. There is language in the decision suggesting that trading programs and offsets are legal as long as they comply with the overall requirements of the CWA.

The Missouri Supreme Court issued a [decision](#) Nov. 12, 2013 upholding a lower court ruling that invalidated the stormwater fee program administered by NACWA member the Metropolitan St. Louis Sewer District (MSD). The court determined through a detailed analysis that MSD's contested stormwater user charge qualified as a tax and not a user fee under Missouri state law, and further determined that the charge was invalid because it had not been put to a voter referendum as required by Missouri law. NACWA and a number of other municipal groups filed an amicus brief supporting MSD's efforts to have the state supreme court overturn the lower court decision.

---

## Bipartisan Voluntary Clean Water Trust Fund Legislation Introduced

Representative Earl Blumenauer (D-OR), along with Representatives Richard Hanna (R-PA), Tim Bishop (D-NY), John Duncan (R-TN), Donna Edwards (D-MD), Ed Whitfield (R-KY), Jim Moran (D-VA), and Thomas Petri (R-WI) introduced bipartisan legislation in November which would establish a voluntary federal trust fund for investments in clean water infrastructure. Under *The Water Protection and Reinvestment Trust Fund Act* the makers of water-based beverages and flushable products could opt to put a clean water logo on their products in exchange for a 3-cent fee on each bottle or product. The revenue from this fee would fund a *Water Infrastructure Investment Trust Fund*, of which 85 percent would be allocated to the Clean Water State Revolving Fund (CWSRF). The remaining 15 percent would fund a *Water Infrastructure Finance & Innovation Authority* (WIFIA) that would provide low-cost capital to clean water infrastructure projects. NACWA has long supported a national clean water trust fund as a way to bolster the CWSRF and provide communities with federal support to meet Clean Water Act goals.

---

## Executive Order and EPA Adaptation Plans Address Resiliency, Climate Impacts

On November 1, 2013, President Obama issued an [Executive Order](#) (EO), “Preparing the United States for the Impacts of Climate Change”. At the same time, EPA released its program and regional [Adaptation Implementation Plans](#) that describe how the Agency will carry out the work of its *Climate Change Adaptation Plan*, written in response to a previous Executive Order (EO 13514, “Federal Leadership in Environmental, Energy, and Economic Performance”). The EO states that “The Federal Government must build on recent progress and pursue new strategies to improve the Nation’s preparedness and resilience” and asks that federal agencies promote information sharing at all levels of government, risk-informed decision making, adaptive learning, and preparedness planning. It establishes an interagency *Council on Climate Preparedness and Resilience*, as well as a [State, Local, and Tribal Leaders Task Force on Climate Preparedness and Resilience](#).

The EPA Office of Water released an *Adaptation Implementation Plan* containing several positive goals, such as supporting energy conservation at wastewater utilities and encouraging climate change consideration in the management of Clean Water and Drinking Water State Revolving Loan Funds. The *Plan* also contains some potential areas of concern, including integrating climate change science or information into a major rulemaking that has not yet been identified, and including climate change considerations in compliance and enforcement activities.

---

## Legislation Reintroduced to Promote Use of Innovative Stormwater Infrastructure; EPA Announces 2014 Technical Assistance Funds

Senator Tom Udall (D-NM) and Representative Donna Edwards (D-MD) re-introduced federal legislation on Tuesday to provide critical support to innovative stormwater strategies and improve our ability to effectively manage polluted runoff and sewage overflows, while relieving pressure on aging infrastructure. [S. 1677/H.R. 3449](#), *The Innovative Stormwater Infrastructure Act of 2013* (formerly known as *The Green Infrastructure for Clean Water Act*), would promote the use of innovative stormwater infrastructure, provide implementation grants for community-based stormwater control projects, and establish up to five Centers of Excellence throughout the country to conduct research, develop recommendations, and provide training and technical assistance for implementing management practices for

stormwater control and management. NACWA has been working with other organizations, including American Rivers, the American Society of Landscape Architects (ASLA), National Resources Defense Council (NRDC), and the Water Environment Federation (WEF) to provide input in the bill and seek co-sponsors.

The EPA Office of Wastewater announced [\\$400,000 in technical assistance](#) that is being offered to communities interested in implementing GI. This technical assistance will advance the adoption of green infrastructure programs in selected communities and help develop knowledge and tools that can be transferred to other communities and to a national audience. The Agency anticipates providing assistance to 5 to 7 communities. Interested communities are encouraged to respond to the [Request for Letters of Interest](#) by January 24, 2014, 5:00 p.m. EST.

---

## **NACWA Partners with Regional Groups to Host Two Local Events**

NACWA partnered with the New York Water Environment Association (NYWEA) to co-host an *Integrated Planning (IP) Workshop* on November 13 in Albany, New York for public agencies across New York State. On the opposite side of the country just a few days later, the Texas Association of Clean Water Agencies (TACWA) held their quarterly meeting in conjunction with the NACWA Clean Water Law Seminar in San Antonio, TX on November 22. While the IP Workshop marks the sixth in a series of nationwide workshops, NACWA is also committed to facilitating and participating in our regional partner organizations' regular meetings. If your organization is hosting a winter or spring meeting that would benefit from our national perspective, NACWA or the relevant public agency member leader would be happy to participate. Additionally, NACWA will continue to work with the Association of Clean Water Administrators (ACWA), the Water Environment Federation (WEF), EPA, our members, and regional partners to plan workshops in the remaining regions (regions 4, 6, 8, and 9). If your organization is interested in co-hosting a workshop in one of the remaining regions, or would like NACWA to participate in a local meeting, please let us know!

---

## **USCM, NACo, NLC Lead Municipal Group Discussion on Affordability with EPA**

EPA recently circulated a draft of its affordability framework, which is intended to provide additional clarity and flexibility regarding how clean water agencies conduct financial capability assessments for meeting Clean Water Act mandates. This document is the focus of ongoing discussions between EPA, the U.S. Conference of Mayors (USCM), the National Association of Counties (NACo) and the National League of Cities (NLC) and other organizations, including NACWA. Based on NACWA's review, the current draft of the affordability framework is a step in the right direction but ultimately provides insufficient additional clarity and flexibility. The framework reasserts that the Agency's 1997 guidance is the baseline for all financial capability assessments and highlights that utilities can provide additional information to supplement the guidance's calculations – something that the 1997 guidance allows for already.

NACWA attended a meeting of municipal leaders and senior EPA officials December 8 to discuss the issue of financial capability and affordability. Convened by USCM, NACo, and NLC, the meeting focused on the Agency's draft affordability framework. The discussion focused on EPA's continued reliance on median household income for assessing affordability, the need for greater consistency and transparency in regional implementation, and the many unique challenges that communities across the country face.