



July 1, 2015

Key Topics

- [Ask Congress to Oppose Cuts to the State Revolving Fund Program](#)
- [Ask Senate to Oppose "Prohibition of Sewage Dumping into the Great Lakes"](#)
- [EPA and Congress React to Finalized Clean Water Rule \(WOTUS\)](#)
- [NACWA Launches State & Regional Stormwater Network, Holds First Call with EPA](#)
- [NACWA Submits Environmental Justice Comments; EPA Releases EJSCREEN Tool](#)
- [Legal Options for Challenging SSI Rule Now Exhausted](#)
- [National Water Quality Trading Network Releases New Resource](#)

Ask Congress to Oppose Cuts to the State Revolving Fund Program

NACWA urges clean water utilities and state water groups to contact their Senators and Representatives to urge them to oppose cuts to the Clean Water State Revolving Fund (SRF) program contained in the House and Senate's proposed Fiscal Year (FY) 2016 appropriations bill for the Environmental Protection Agency (EPA). Utilities and others interested in writing letters are invited to use the [coalition letter](#) signed by NACWA and the other major water sector organizations as a template.

The [House FY16 EPA spending package](#) contains a drastic cut of 23% to the Clean Water and Drinking Water SRFs. The CWSRF is funded at \$1.018 billion and the DWSRF at \$757 million – a 30% and 16% cut respectively. The [Senate bill](#) calls for similar cuts providing the SRFs \$1.852 billion -- \$1.047 for the CWSRF and \$776 million for the DWSRF (28% and 14% cuts respectively).

These spending bills are calling for steep cuts to clean water funding during a time when drinking water and wastewater agencies face increased regulatory and enforcement pressures, as well as unprecedented droughts in one third of the country. It is critical that the clean water community voice its opposition to these cuts and urge that funding for the Clean Water and Drinking Water SRF programs be restored.

Visit www.house.gov and www.senate.gov for contact information for your Members of Congress.

Ask Senate to Oppose "Prohibition of Sewage Dumping into the Great Lakes"

NACWA is deeply concerned with [Section 428](#) of [S. 1645](#), the Senate's FY16 appropriations package for the Department of Interior and EPA, which would prohibit any sewer overflows to the Great Lakes and its tributaries, and prohibit the use of blending by any direct or indirect discharger to the Great Lakes.

If you are a direct or indirect discharger into the Great Lakes, or have utility members who are, please contact your Senators and urge them to oppose this language in the final FY16 appropriations bill for EPA. In addition, ask your Senators' staff to contact staff for Senators' Murkowski and Udall to voice their Senator's concern. A list of Senate Legislative Assistants can be found [here](#) and a template [letter](#) is also available for your use. NACWA has joined other water sector organizations to oppose these provisions and submitted a [letter](#) on June 26 to congressional staff protesting the inclusion of Sec 428.

Section 428 was included in the appropriations bill at the request of Senator Mark Kirk (R-IL) who has sponsored similar legislation in prior Congresses. The stand-alone legislation has never advanced prior to this. Though the full Senate will likely not consider this until early September, **action is needed NOW**.

EPA and Congress React to Finalized Clean Water Rule (WOTUS)

In the wake of the release of the new [Clean Water Rule](#) (often referred to as the Waters of the U.S. (WOTUS) Rule), EPA has been reaching out to a variety of stakeholders to clarify the changes in the final version. The final rule was published in the [Federal Register](#) on June 29, and will become effective 60 days thereafter, on August 28. NACWA believes that by-in-large the provisions in the final rule address the concerns that are of most importance to the clean water community.

The final definition of 'waters of the United States' maintains the key elements NACWA has fought to preserve and addresses a number of the concerns NACWA raised in its comments, including maintaining the waste treatment system exemption; maintaining the exemption of groundwater and groundwater drained through subsurface drainage systems from federal jurisdictional reach; adding the exclusion of "[s]tormwater control features constructed to convey, treat, or store stormwater that are created in dry land"; and adding a key recommendation from NACWA's comments – to specifically exclude wastewater recycling structures.

Despite the release of the final rule, Congress continues legislative efforts to require the Administration to rewrite the Rule. The Senate Environment and Public Works Committee passed [S. 1140, the Federal Water Quality Protection Act](#), in June requiring EPA to withdraw the rule and replace it with provisions more acceptable to members of Congress. The House passed similar legislation, [H.R. 1732, the Regulatory Integrity Protection Act of 2015](#), by a vote of 261 to 155. On the same day that the rule was published in the Federal Register, three separate legal challenges were filed by coalitions comprised of nearly 20 states. More legal challenges are expected from environmental and industry groups.

NACWA Launches State & Regional Stormwater Network, Holds First Call with EPA

State and regional stormwater associations and organizations from all corners of the country met on June 30 via conference call for the first meeting of the National Stormwater Network (NSN). NACWA convened the NSN to engage these groups more substantively on national policy-making and to better enable coordination and collaboration among the groups. For the first call of the NSN, over a dozen EPA staff participated to brief the groups on the regulatory response the Agency is considering to address an ongoing legal challenge to the Phase II program. Environmental groups are claiming that the Agency has failed to comply with a 2003 decision that mandated EPA to strengthen its small municipal separate storm sewer systems (MS4s) rule.

Organizations working on MS4 issues are welcome to participate in the NSN. The NSN will, at no cost, provide groups with regular meetings on policy issues, a quarterly publication with analysis on stormwater issues, and most importantly: a louder, more unified voice on these issues with regulators and policy-makers as they continue to more rigorously regulate the MS4 community. If your organization is interested in participating in the NSN, or you know of another stormwater-focused regional group who might be, please contact [Brenna Mannion](#).

NACWA Submits Environmental Justice Comments; EPA Releases EJSCREEN Tool

EPA [released](#) its draft 2020 environmental justice (EJ) [framework](#) in April to map out the key EJ actions the Agency intends to take over the next several years. NACWA applauded EPA's focus on EJ, but is encouraging greater consideration of community financial capability and affordability issues in EJ initiatives in its ongoing communications with the Agency.

NACWA's [comments](#) on the framework noted that while the *EJ 2020 Action Agenda Framework* includes economically distressed communities as among the primary targets of EJ efforts, it is these same communities that bear a disproportionate share of the costs and rate increases related to federally-mandated clean water investments. This is particularly true when it comes to wet weather consent decrees and enforcement actions. NACWA's comments highlighted this contradiction in EPA's EJ strategy, and suggested some specific language changes in the draft Framework to address financial capability and affordability concerns.

EPA also recently [released](#) a public version of its [EJSCREEN tool](#). EJSCREEN is intended to be an informational tool for use by EPA, states, the regulated community, and the public to screen for a variety of environmental, demographic, and economic factors that could be helpful to understand when making environmental compliance decisions. EPA is committed to making continual improvements to EJSCREEN, and anyone with feedback on the tool is encouraged to contact NACWA.

Legal Options for Challenging SSI Rule Now Exhausted

The D.C. Circuit Court of Appeals issued a [decision](#) June 3 in litigation over EPA's final Non-Hazardous Secondary Materials (NHSM) Rule, dismissing challenges filed by NACWA and others to the rule. The court rejected NACWA's arguments that the "domestic sewage exclusion" (DSE) in the Resource Conservation and Recovery Act (RCRA) exempts sewage sludge from classification as a solid waste when incinerated. The court agreed with EPA's position that RCRA's definition of sludge encompasses sludge produced during the wastewater treatment process, and thus the DSE does not apply.

The NHSM Rule provides a key regulatory underpinning for EPA's Sewage Sludge Incinerator (SSI) Rule by defining sludge when incinerated as a solid waste. NACWA challenged the NHSM Rule as part of the Association's overall advocacy related to SSI issues. With the D.C. Circuit's ruling in the NHSM case, all practical legal avenues to challenging EPA's SSI regulations are now closed.

NACWA is still working to address several implementation challenges SSI utilities have identified with the new rules and submitted [comments](#) on EPA's draft [Federal Implementation Plan](#) (FIP). One of NACWA's main concerns is the requirement in the rule to conduct performance tests at a minimum of 85 percent of the SSI's maximum permitted capacity. Utilities are having difficulty testing at the 85 percent level and operating parameters set at this level are inappropriate and unachievable in many cases when the SSIs are operated at their normal, lower feed rates.

EPA typically takes up to a year to finalize federal plans, but with the March 21, 2016 final compliance date now only nine months away, the Agency will have to move quickly to have the plan in place.

National Water Quality Trading Network Releases New Resource

The National Network on Water Quality Trading, a group of 18 diverse organizations – including NACWA – representing agriculture, wastewater and stormwater utilities, environmental groups, regulatory agencies and

practitioners delivering water quality trading programs, released [Building a Water Quality Trading Program: Options and Considerations](#) in June to provide essential tools for new and evolving water quality trading programs.

.....

.....

