



October 16, 2015

## Key Topics

- [Great Lakes CSO Proposal Could Cost \\$72 Billion; Opposition Grows on Capitol Hill](#)
- [Preproposal Comments on Phase II Stormwater Remand Rule](#)
- [Clean Water Rule Challenged](#)
- [Final Rule Requires E-Reporting of NPDES Monitoring Information](#)
- [Final Water Quality Standards Rule Contains Several Key Changes](#)
- [Water Resources Utility of the Future Annual Report Released](#)
- [NEORS D Achieves Major Legal Victory on Stormwater](#)
- [NACWA Applauds Inspector General Report on EPA Wet Weather Enforcement](#)
- [Associated Press Focuses on Water](#)

---

## Great Lakes CSO Proposal Could Cost \$72 Billion; Opposition Grows on Capitol Hill

NACWA released results of its [analysis on the expected compliance costs](#) related to a [Senate proposal](#) that would eliminate combined sewer overflows (CSOs) to the Great Lakes, showing the collective price tag of the proposal would exceed \$72 billion for the more than 180 permitted CSO facilities discharging to the Great Lakes. The controversial provision is included in the Senate's Fiscal Year (FY) 2016 [spending package](#) for the Environmental Protection Agency (Section 428). The \$72 billion figure is based on survey responses and a detailed engineering analysis of direct and indirect dischargers to the Great Lakes that would be impacted by the proposal if it were enacted. The bill would set extremely negative precedent nationally if it were to pass – potentially undermining the *CSO Policy* and the use of blending for all communities nationwide – and NACWA has been [actively pushing back](#) against it in recent months.

The extent to which Great Lakes communities would be negatively impacted by this proposal was also part of a discussion during a recent [Great Lakes Restoration Initiative oversight hearing](#) in the House Water Resources and Environment Subcommittee. During a question and answer exchange between Mayor John Dickert of Racine, Wisconsin and Congressman Reid Ribble (R-WI), the Mayor indicated that Racine would face costs far exceeding what ratepayers could afford to pay and for what the Mayor argued would be a poor return on ratepayer investment. In his testimony, Mayor Dickert referred Committee Members to a [joint letter](#) by the U.S. Conference of Mayors, National League of Cities, National Association of Counties and the National Association of Regional Councils submitted for the record explaining why these national municipal organizations are opposed this proposal.

State groups and clean water utilities nationwide should weigh in with their Congressional Delegations to ensure this proposal is not included in a final package. NACWA has put together an [online resources page](#) with background information and additional resources that can be helpful in reaching out to your congressional representatives.

---

## Preproposal Comments on Phase II Stormwater Remand Rule

NACWA filed [pre-proposal comments](#) with EPA October 2 on the upcoming rulemaking that will make changes to the Phase II municipal stormwater program. A settlement was reached in ongoing litigation between environmental activist groups and EPA over the national Phase II stormwater program, setting the stage for a new rulemaking by the Agency that will amend portions of the Phase II regulations. EPA and the activist groups filed a joint motion and proposed settlement agreement with the U.S. Court of Appeals for the Ninth Circuit on August 26. The proposed settlement agreement would require EPA to propose a rule with changes to the Phase II program by December 17, 2015 – and to finalize the rule by November 17, 2016.

In NACWA's comments, the Association noted that the proposal should be as narrowly tailored as possible and should not attempt to define the "maximum extent practicable" (MEP) standard for municipal stormwater dischargers. NACWA also encouraged EPA to ensure that any changes to the Phase II program do not significantly change the current Phase II regulations or impose additional administrative burdens on the municipal stormwater community. The new National Stormwater Advocacy Network (NSAN) convened by NACWA has been in active discussions with EPA on the proposed changes and will play a significant role once the rule is proposed. The NACWA has the ability to amplify voice of the state and regional stormwater groups through NSAN's advocacy during this process.

---

## Clean Water Rule Challenged

The U.S. Court of Appeals for the Sixth Circuit issued an [order](#) October 9 staying implementation of EPA's Clean Water Rule. This stay applies nationwide and means that the rule is no longer in effect anywhere in the country. The stay will last at least until the Sixth Circuit determines if it has jurisdiction over the various legal challenges that have been filed against the rule. Additionally, four days later the U.S. Judicial Panel on Multidistrict Litigation rejects EPA's request to consolidate nine Clean Water Rule lawsuits filed in seven district courts across the country into one case. All of these judicial developments mean that the legal future of the Rule is very much in flux and will likely remain so for some time.

As the legal battles continue, the Clean Water Rule is also facing Congressional criticism. Senator James Inhofe (R-Okla.), Chair of the [Senate Environment & Public Works Committee](#) sent a [letter](#) to EPA and the U.S. Army Corps of Engineers in late August questioning whether the final Rule Clean Water Rule will "regulate not only current streams and wetlands, but land where streams and wetlands may have existed long before the enactment of the Clean Water Act." The letter suggests the Rule could impact buried sewer and stormwater lines that were previously uncovered streams. EPA has suggested this is not a correct interpretation of the Rule but has not yet responded in writing.

NACWA will continue to track developments regarding the Rule and report on any updates.

---

## Final Rule Requires E-Reporting of NPDES Monitoring Information

EPA's Office of Enforcement & Compliance Assurance (OECA) finalized the National Pollutant Discharge Elimination System (NPDES) e-Reporting Rule. The final rule requires that NPDES regulated entities provide monitoring information electronically, rather than via paper reports as was done previously. The Agency will implement the requirements in two phases, with Phase I beginning one year after the effective date of the final rule, and Phase II beginning 4 years thereafter. Discharge Monitoring Reports (DMRs) will need to be electronically filed with EPA, or authorized NPDES programs, within Phase I. Additionally, those entities permitted under the Federal

Biosolids Program will be required to submit their Sewage Sludge/Biosolids Annual Program Reports directly to EPA as part of Phase I. Electronic submission of the remaining reports will begin five years after the effective date of the final rule in Phase II, including MS4 program reports, sewer overflow event reports and general permit reports.

NACWA submitted comments on the proposal and is pleased that some of our concerns were addressed. EPA lengthened the overall implementation period in the final rule, heeding NACWA's comments, which pointed out that the roughly two years originally allotted for complete rule compliance was an overly aggressive timetable and would have put many permittees at risk for non-compliance.

---

## Final Water Quality Standards Rule Contains Several Key Changes

EPA finalized the [Water Quality Standards Rule](#) in August. EPA updates the federal water quality standards (WQS) regulation regularly to provide a more defined pathway for permitting authorities "to improve water quality and protect high quality waters". The final rule tracks closely with the proposal, with mostly minor changes to further clarify the Agency's intent.

A number of more significant changes, however, were made by EPA to key sections based on comments it received. While the rule, in theory, applies only to states and the development and implementation of their water quality standards programs, several elements of the rule will have impacts for permittees. For example, the rule will allow for the use of more open-ended variances. In the rule, EPA finalized revisions in the same six areas it proposed to change: 1) Administrator's Determination; 2) Highest Attainable Use; 3) Triennial Reviews; 4) Anti-Degradation; 5) Variances; and, 6) Compliance Schedules.

Consistent with NACWA's [comments](#), EPA revised the language on triennial reviews to clarify that states are not required to adopt all new or revised Clean Water Act 304(a) criteria recommendations released since the prior review, and that states may prioritize which criteria they have the resources to address during a particular review process. 304(a) criteria are recommended water quality criteria for the protection of aquatic life and human health in surface water for approximately 150 pollutants. The section on variances was changed extensively, resulting in a mixed bag for clean water utilities. In general, NACWA believes the language on variances, though potentially limiting some past flexibility the states may have had, is a positive indication that EPA is committed to ensuring this important tool is actually used. EPA's website provides a [redline](#) comparison of the proposed and final regulatory language for those interested in seeing the actual revisions.

---

## Water Resources Utility of the Future Annual Report Released

NACWA is pleased to announce the release of the [2015 Water Resources Utility of the Future Annual Report](#). NACWA, in partnership with the Water Environment Federation (WEF), the Water Environment Research Foundation (WERF), and WateReuse developed the *Annual Report* to provide an update on developments in the utility of the future (UOTF) arena since the original UOTF Blueprint was released in 2013.

In addition to describing recent accomplishments of clean water utilities and exploring the newest horizons for innovation, the Annual Report also discusses an emerging theme from UOTF-focused efforts – that clean water utilities often do not act alone. Innovation has instead occurred within an "innovation ecosystem" comprised of technology developers, consulting engineers and scientists, state and local governments, the finance community and a wide range of professional organizations that represent the clean water sector. The *Annual Report* provides greater insight into how each of these stakeholders is contributing to the increasingly widespread adoption of UOTF practices and approaches.

NACWA and its partner associations are collaborating with EPA on a series of web seminars in the coming year and NACWA will provide further information when it becomes available.

---

## NEORSD Achieves Major Legal Victory on Stormwater

The [Ohio Supreme Court](#) issued a ruling in September in the [Northeast Ohio Regional Sewer District \(NEORSD\) v. Bath Township, et al.](#) case upholding NACWA Member Agency NEORSD's municipal stormwater management program and fee and marking a major legal victory for the clean water utility community.

The legal dispute over NEORSD's authority for the program and related stormwater fee reached all the way to the state Supreme Court after conflicting decisions by two lower courts. In the [5-2 decision](#), the state Supreme Court overturned a lower appellate court and held that "the issues in this case are exceedingly straightforward: 1) is the Sewer District's regional stormwater management program authorized by statute and by its charter, and 2) is the attendant fee structure authorized by statute and by the charter. We answer both questions in the affirmative."

NACWA joined with the Association of Ohio Metropolitan Wastewater Agencies (AOMWA) to file a [brief](#) in the case supporting NEORSD as part of the Association's aggressive advocacy to defend stormwater programs. The Association applauds the court's decision, which not only affords legal recognition and protection for NEORSD's stormwater management program, but also provides positive precedent that will benefit utilities managing stormwater nationwide. The case also represents an important example of how NACWA can partner with state and regional clean water organizations on critical state or regional legal issues that have national implications.

---

## NACWA Applauds Inspector General Report on EPA Wet Weather Enforcement

On September 16, EPA's Office of Inspector General (OIG) released a report, [EPA Needs to Track Whether Its Major Municipal Settlements for Combined Sewer Overflows Benefit Water Quality](#), that highlights needed changes in how EPA approaches municipal wet weather enforcement actions. Specifically, the report notes that EPA must improve tracking and reporting on how the results of wet weather enforcement initiatives and consent decrees are leading to fewer sewer overflows and resulting improvements to water quality in receiving waters.

NACWA provided significant input to OIG during the investigation, explaining that wet weather consent decrees are among the most expensive public investments a community will ever make, and highlighting the importance of ensuring these expenditures can be tied to specific, measurable environmental improvements. The report recognizes the significant financial impact of these projects and echoes NACWA's position that EPA must do a better job of ensuring these public funds lead to actual water quality improvements.

---

## Associated Press Focuses on Water

During the first week of October, the Associated Press (AP) released two segments of a multi-part series of stories focused on challenges facing cities and water and wastewater utilities. The series will examine issues including drought in the West, wet weather concerns, and the challenges from aging infrastructure. The articles released thus far have largely addressed drinking water. Since the AP is owned by contributing newspapers, radio, and television stations all across the country, which regularly use material written by AP staff journalists, the stories have gotten widespread publication. NACWA anticipates that subsequent stories will also address wastewater issues.

NACWA has created a [webpage](#) listing all the articles of which we are currently aware. Please be sure to share these stories using social media platforms, blogs and other external communications channels to reach your customers, and watch for similar stories in your local papers in coming weeks. If a story appears in your local or regional newspaper, please forward a link to NACWA and consider writing a Letter to the Editor or meeting with the Editorial Board to share your utility's story. If you need any assistance, please contact NACWA. We have also

recommended that the AP conduct follow-up interviews with a number of key utilities across the country. Utilities contacted by the AP for interviews are asked to inform NACWA. All information and questions should be directed to [Amanda Waters](#), NACWA's General Counsel & Director of Public Affairs.

.....

