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Congress Leaves for Summer Recess with Unfinished Business

Members of Congress left on an extended summer recess in mid-July with a handful of uncompleted appropriations bills. As a result, when it returns in September Congress will be under pressure to quickly pass a continuing budget resolution before the Fiscal Year ends September 30th in order to avoid a government shut-down. Although the past few months have exposed bitter partisanship, Members of Congress did come together on comprehensive energy legislation, opioid legislation and GMO food-labeling legislation before they left town.

Notable congressional action of interest to clean water utilities included agreement by the Senate to go to conference with the House on a comprehensive energy reform bill. Senate Majority Leader Mitch McConnell (R-KY) enlisted a group of Senate conferees to join their House counterparts in crafting a joint energy reform bill. If signed into law, the bill would be the first major revision in federal energy policy in nearly a decade. Although congressional leadership has taken the first step in ushering the package towards the President's desk, it faces an unsure future in conference due to several "poison pill" provisions included in the House version. However, the Senate version ([S.2012](#)) includes a number of provisions related to the [energy-water nexus](#) that NACWA supports, and the Association will work to ensure these provisions are included in a final package.

On the appropriations front, the House proposed FY17 Department of Interior-EPA appropriations bill, [H.R. 5538](#), receiving approval along partisan lines after debating over 130 amendments. The bill includes provisions to fund the *Water Infrastructure Financing and Innovation Act* (WIFIA) at \$50 million dollars and provide \$6.5 million for integrated planning activities. But it also includes steep cuts to the Clean Water State Revolving Fund (SRF) Program of nearly \$400 million while proposing a slight increase of \$100 million for the Drinking Water SRF. The Senate EPA ([S. 3068](#)) spending proposal restores nearly all the proposed cuts to the CWSRF while increasing the DWSRF slightly. The Senate version also includes a provision requiring EPA to provide an update on its progress and timeline of the reporting and notification requirement for CSO dischargers to the Great Lakes. Unfortunately, the Senate was unable to complete work on its Interior-EPA spending bill before the recess.

Finally, despite a promising start and significant advocacy from a wide range of stakeholders including NACWA, both the House and Senate left for Washington without floor consideration on the 2016 *Water Resources Development Act* (WRDA). The House WRDA package ([H.R. 5303](#)) contains authorizations for 28 Army Corps of Engineers (ACOE) projects as well as a stormwater provision proposed by NACWA that would increase coordination between the ACOE and municipal stormwater agencies. The much broader Senate ([S. 2848](#)) package includes numerous provisions related to clean water and drinking water infrastructure investment, as well as ones that address affordability challenges under the Clean Water Act. Consideration by both the House and Senate of their respective WRDA bills, and the beginning of potential conference discussions, will have to wait until September's work period.

NACWA will spend the rest of the summer meeting with key Congressional staff and coordinating with other stakeholders to encourage prompt Congressional consideration of priority legislation, especially WRDA, when lawmakers return in September.

U.S. Supreme Court: Army Corps Jurisdictional Determinations Are Subject to Review

In a unanimous decision announced May 31, the United States Supreme Court in *Hawkes v. US Army Corps of Engineers* [held](#) that an approved jurisdictional determination ("JD") under the Clean Water Act Section 404 permitting program is subject to immediate judicial review rather than requiring landowners to wait until after the issuance of a permit before bringing a challenge.

The 404 permitting process, which applies to the discharge of dredge or fill materials to "waters of the United States," is often a lengthy and expensive process and landowners cannot legally proceed with projects until the permit is issued. Often the first step in the process is determining whether or not the waters at issue are even subject to the program; i.e., the issuance of a JD by the Army Corps of Engineers. The Court's decision in favor of judicial review represents a win for clean water utilities seeking to complete projects on time and on budget, although it may also open the door to additional citizen suits as environmental groups seek review of determinations that waters are not subject to protection and permitting requirements under the Clean Water Act.

Chesapeake Bay POTWs Hit Nutrient Reduction Targets 10 Years Early

Federal and state environmental officials on June 14 [hailed the progress](#) made by public wastewater treatment facilities in the Chesapeake Bay watershed in reducing nutrient discharges, noting that the sector is meeting its 2025 targets in the Chesapeake Bay total maximum daily load (TMDL) 10 years early. EPA highlighted that publicly owned treatment works have reduced nitrogen discharges to the Bay by 57% and phosphorus by 75%, and stated that "the wastewater sector is leading the way....to restore the Bay and local waters." Ben Grumbles, current Maryland Secretary of the Environment and former EPA Assistant Administrator for Water, said that "wastewater plants are workhorses for clean water and the Chesapeake Bay." NACWA congratulates its regional partners in the Bay watershed on this remarkable achievement.

NACWA Comments Highlight Concerns with "Technical" Report on Flow Alteration

NACWA filed [comments](#) June 17 on a draft document developed by EPA and the U.S. Geological Survey (USGS), [Technical Report: Protecting Aquatic Life from Effect of Hydrologic Alteration](#), raising concerns over the extensive policy and legal discussions throughout the draft.

NACWA's comments underscored the important role that flow-related impacts can have on aquatic life – the focus of the draft report – but also noted that the Clean Water Act is focused on protecting all designated uses and does not prioritize aquatic life uses above all else. The draft "does not strike an adequate balance among the various uses of the nation's waters – beyond the protection of aquatic life – and fails to recognize that returning waters to their natural flow regimes in many places will not be possible given the extent of development and existing alteration."

But it was the inclusion of extensive policy/legal discussions in what is described as a "technical document" that raised the most concern. NACWA's comments stressed that EPA and USGS must either "work to separate and remove the policy discussions from the document before it is finalized, or initiate a more substantive review process on a revised version of the report acknowledging that it contains both extensive policy and technical information."

President Signs Toxic Substance Control Reform Law, NACWA Tracking Implementation

President Obama signed into law [H.R.2576, the Frank R. Lautenberg Chemical Safety for the 21st Century Act](#) on June 22nd – named for the late New Jersey Senator who long-championed Toxic Substances Control Act (TSCA) reform.

The final bill increases Federal preemption of State authority to regulate chemicals in certain situations – a key sticking point during negotiations. The Federal preemption was scaled back from what was initially proposed, which allowed the bill to garner broad support. Nonetheless, States and other stakeholders – including NACWA, which [weighed in](#) on the bill’s preemption language – will monitor how USEPA implements the bill. The Association will remain alert for any issues POTWs encounter.

NACWA Expresses Concern Regarding Tax-Exempt Bond Regulations

NACWA submitted [comments](#) in late May along with a coalition representing the municipal water and wastewater sector on a proposed [rule](#) that would change the way the Internal Revenue Service (IRS) defines "political subdivision" for purposes of tax-exempt bond issuance. The rule imposes two new requirements: first, that political subdivisions operate in a way that provides "no more than incidental benefit to private persons;" and, second, that a single entity of state or local government must have control over the political subdivision.

Under existing regulations, a "political subdivision" is "any division of any state or local governmental unit which is a municipal corporation or which has been delegated the right to exercise part of the sovereign power of the unit." This has meant that a public entity with authority to exercise taxing, eminent domain, or police (regulatory) powers, is able to issue tax-exempt bonds. If the proposed rule is enacted as is, certain member utilities may be at risk of not clearly meeting the new requirements, which could restrict the ability to issue tax-exempt bonds to finance projects.

NACWA provided testimony at a public hearing held by the Internal Revenue Service (IRS) and United States Treasury on June 6 regarding proposed regulations to alter the definition of "political subdivision" for the issuance of tax-exempt bonds. The Association’s remarks echoed the concerns raised in its written comments.



