

CLEAN WATER

Summer 2017

ADVOCATE

A NACWA MAGAZINE

A Message from NACWA's President

Strength In Numbers

The Case for Clean Water Agencies' Participation in Associations

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The Role of Science in Clean Water Advocacy

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New Approaches for 21st Century Clean Water Act Enforcement



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— Ray Marshall
Executive Director,
Narragansett Bay Commission
& NACWA President (2016-2017)



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Founded in 1970, the National Association of Clean Water Agencies (NACWA) is the nation's recognized leader in legislative, regulatory and legal advocacy on the full spectrum of clean water issues. NACWA represents public wastewater and stormwater agencies of all sizes nationwide, and is a top technical resource in water quality, water management and sustainable ecosystem protection. NACWA's unique and growing network strengthens the advocacy voice for all member utilities, and ensures they have the tools necessary to provide affordable and sustainable clean water for all communities. Our vision is to represent every utility as a NACWA member, helping to build a strong and sustainable clean water future.

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Strength In Numbers

THE CASE FOR CLEAN WATER AGENCIES' PARTICIPATION IN ASSOCIATIONS

by Ray Marshall

If you've ever read the famous Native American parable "One Stick, Two Stick" (see opposite page), you'll likely agree that it neatly illustrates the power of an association—much like a family or village—that stems from two simple yet powerful principles: (1) alone we break, but bundled together, we are unbreakable and can withstand most anything, and perhaps even more important, (2) only through a shared enterprise can we muster the strength to shape the future—and by doing so, ensure a lasting legacy.

As we continue to face an uncertain and complex political landscape, it is increasingly clear to me that now, more than ever, we must continue and even strengthen our commitment to stand together. And we must do so not only to defend the gains for clean water that we've achieved to date, but to shape a future that places municipal clean water agencies at the center of an emerging environmental policy.



One Stick, Two Stick The Power of Unity

An old man is dying and calls his people to his side,
and he gives a short, sturdy stick
to each of his many offspring, wives, and relatives.

“Break the stick,” he instructs them.

With some effort, they all snap their sticks in half.
“This is how it is when a soul is alone without anyone:
he can be easily broken.”

The old man next gives each of his kin another stick,
and says,

“Put your sticks together in bundles of twos and threes.
Now, break these bundles in half.”

No one can break the sticks
when there are two or more in a bundle.

“This is how I would like you to live after I pass on.”

The old man smiles.

“We are strong when we stand with another soul.
When we are with another, we cannot be broken.”

“In a very real sense, utility leaders are our communities’ point persons and first responders on the public health and environmental protection fronts.”

We should be proud of the collective accomplishments that strengthen us all and keep us focused on building that lasting legacy:

- *NACWA has added more than 35 new members year to date, demonstrating a growing awareness of the need for clean water agencies to unite and underscoring the unique value proposition, or return on investment, to be gained from a proactive national agenda;*
- *NACWA has successfully defended the funding levels for State Revolving Funds (SRFs) and has ensured funding for the Water Infrastructure Financing and Innovation Authority (WIFIA) in both the Fiscal Year (FY) 2017 budget and the Trump Administration’s proposed FY2018 budget (notably, these are the only major programs in these budgets that avoided deep cuts);*
- *NACWA has set up a “Utility Executive Peer-to-Peer Network” online, providing a venue (and valuable opportunity) for utility executives to share best practices and develop solutions that can lift the sector as whole, with an equal focus on large, medium, and small agencies; and*

- *NACWA has done all of this with an unmatched spirit of collaboration with its fellow sector organizations, perhaps best exemplified by Water Week 2017, which enjoyed participation from the broadest array of water sector organizations, netting well over 1,000 Capitol Hill office visits by water sector leaders specifically to elevate clean and safe water as a top national priority.*

The work that we do in the municipal clean water sector—in my case as the Executive Director of the Narragansett Bay Commission in Providence, Rhode Island, and as NACWA’s President this year—is critical. In a very real sense, utility leaders are our communities’ point persons and first responders on the public health and environmental protection fronts. And with that distinction comes the responsibility to stay vigilant, maintain growth, and continue improving on multiple levels.

We can all feel that there are matters of significant concern all around us based on the direction that the current Congress and Presidential Administration may take regarding our core issues and interests. Whether it is a threat to tax exemption for municipal bonds, a backward step on the need to improve resilience to climate impacts, movement on the issue of low-income affordability challenges and how they must be addressed, or a fight to ensure that any infrastructure bill treats water infrastructure as an equal to transportation or energy,



“The call for unity must remain an important first step in any of our action plans.”

the call for unity must remain an important first step in any of our action plans.

Ultimately, there is reason to be optimistic. Far from rose-colored, this optimism stems from the fact that clean water professionals have always been the true environmentalists by ensuring clean and safe water—through hard, daily work, not slogans—and by proving time and again to be the water sector’s chief innovators, exhibiting unmatched sophistication in engineering sustainable solutions, and forging a path toward our collective vision: the Utility of the Future.

I’m encouraged to see a growing number of utilities, in the spirit of unity, becoming active through organizations like NACWA. This tells me that a general desire for unity exists



and is expanding. Knowing that NACWA exists to protect our mutual interests and create a leadership network for us to harness our individual and collective voices reassures me that our children and grandchildren will see continued environmental progress.

There’s much wisdom to be gained by the wise Navajo man’s charge to his children: “Put your sticks together in bundles of twos and threes.” Whether we represent a large, medium, or small utility; an urban, rural, or suburban region; or a wet or arid climate; we can all stand to benefit by sticking together (pardon the pun) and continuing to do our part to build on an already unmatched legacy.

On behalf of NACWA, I thank you for your support. 💧

Ray Marshall served as President of NACWA (2016-2017), and serves as Executive Director of the Narragansett Bay Commission (NBC) in Providence, RI, where he directs all aspects of NBC’s operations.



Why *Your* Advocacy Engagement Matters

by David St. Pierre
& Nathan Gardner-Andrews



We both had the privilege to be involved in an important NACWA advocacy victory a few years ago that prevented some very costly and unnecessary wet weather regulations from impacting municipal clean water utilities in the Great Lakes and, by extension, the entire country. One of the things we heard following that experience from key policymakers and congressional staff was that the level of grassroots advocacy from the municipal utility community made the difference. The number of emails, phone calls, and letters that Members of Congress received from utilities across the nation were simply overwhelming. And they really made Congress understand that the proposed new requirements were simply not good policy.

We're sharing this story only because we recognize how hard it can be for individual utilities to find the time to engage directly in clean water advocacy. We know this well because one of us runs a major clean water utility, and the other regularly visits utilities during travel around the country for conferences or speaking engagements.

We both have a tremendous appreciation for how hard our utility members work—day in and day out—to serve their communities, improve the environment, and protect public health. These folks are operating plants, overseeing complicated systems, managing multimillion-dollar construction projects, and much more. We've seen first-hand that most utilities simply don't have the time to track all the latest advocacy developments in the clean water world. And that's where NACWA comes in.

NACWA's job is to take all the information and developments around legislation, regulations, and legal issues in the clean water sphere, boil them down to their key components, and provide a succinct but accurate analysis to all the busy utility folks managing wastewater and stormwater systems. We advance key advocacy initiatives on behalf of our collective utility members and generate resources that can help utilities address their regulatory, legal, legislative, and communications requirements more easily. In short, NACWA is a "one stop advocacy shop" for our utility members, providing everything required to meet their

advocacy needs so they can focus on their most important mission: running their systems and serving their communities.

Ironically, however, no matter how hard NACWA works as a national clean water advocate, there is no getting around the simple truth that NACWA's effectiveness is ultimately grounded in the engagement efforts of local utilities in the advocacy process! As much as NACWA is respected in the halls of Congress, at the US Environmental Protection Agency (EPA), and in the courts, our message is magnified enormously when individual utilities add their voices to carry the clean water message. Whether it's by calling or writing members of Congress, submitting comments to the EPA, serving as examples in court briefs, or penning letters to the editor of the local paper, municipal utilities wield unique and influential power in advancing important clean water advocacy messages.

The Power of Face to Face

Don't worry, there's no need to write a white paper—unless you're into that kind of thing. Utilities can become (and are) powerful advocates just by meeting directly with policymakers. Whether meeting with elected federal representatives back home in their district offices; traveling to events in Washington, DC, like Water Week, to engage directly in the national political scene; or hosting key policymakers at local plants to show them first-hand the great work being done by clean water agencies every day—these in-person interactions can pay great dividends.

We can't count how many conversations we've had over the years with policymakers in DC, similar to the story described at the beginning of this article, in which phone calls, letters, and

face-time made the difference. Humans are, after all, social beings, and faces connected with issues more often than not will do more to move the needle than well-written briefing papers. Folks from both the EPA and Congress have told us directly that their minds have been changed, and their perspectives on regulations and legislation altered, based largely on personal interactions with utility professionals—letters, phone calls, facility tours, and the like. These kinds of contact really do matter!

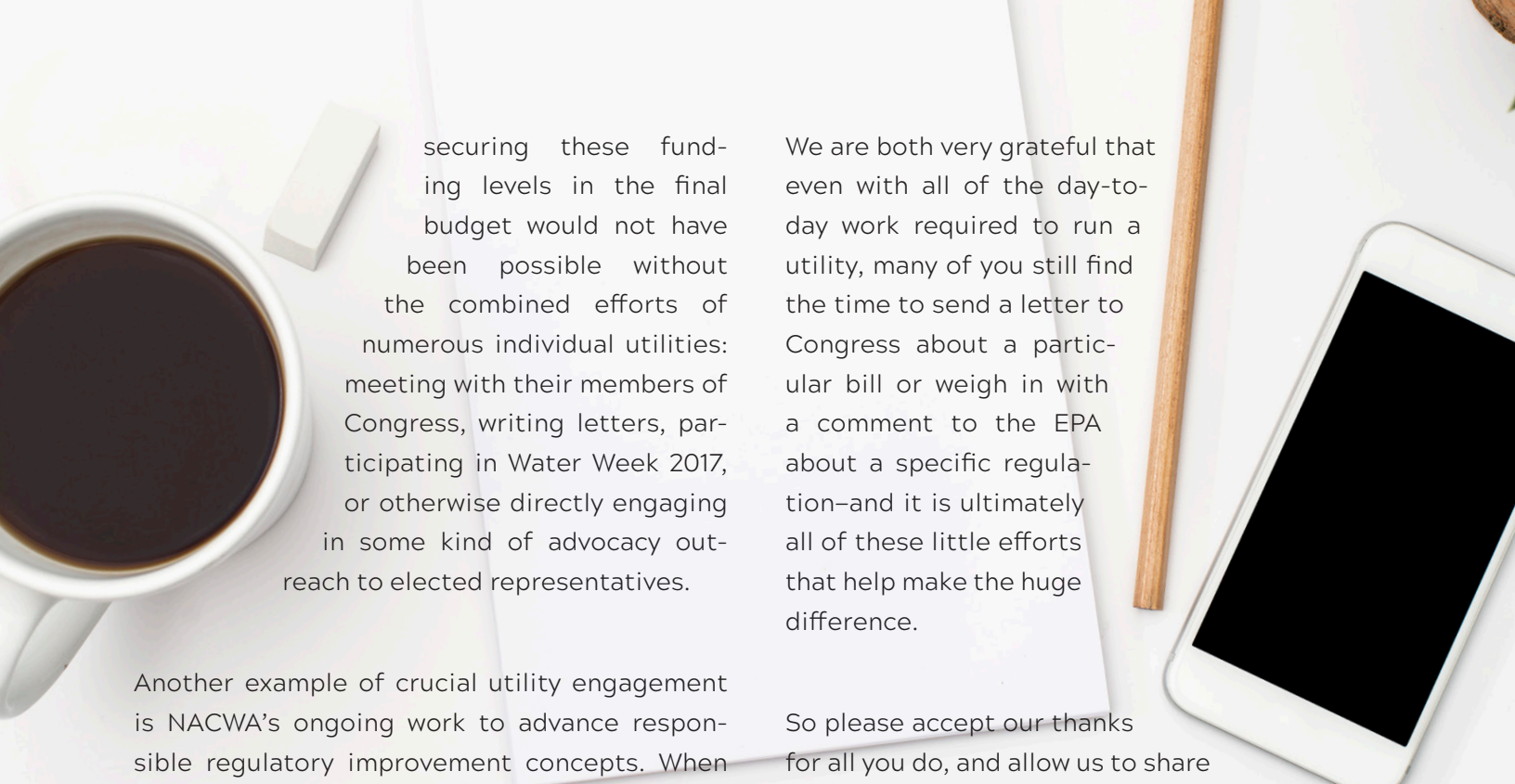
We don't have to look far to see recent tangible benefits from direct utility engagement: the recently-passed federal spending bill for the rest of Fiscal Year 2017 maintains key funding for critical clean water programs like the Clean Water State Revolving Fund, regional watershed pro-

“...there is no getting around the simple truth that NACWA's effectiveness is ultimately grounded in the engagement efforts of local utilities...”

grams, and nonpoint source control programs. These funds were included in the bill despite a clear desire by the new Trump Administration to significantly cut, or even eliminate, some of these important programs. Big advocacy win!

And yet, we can attest that, while NACWA played an important role in fighting for these initiatives,





securing these funding levels in the final budget would not have been possible without the combined efforts of numerous individual utilities: meeting with their members of Congress, writing letters, participating in Water Week 2017, or otherwise directly engaging in some kind of advocacy outreach to elected representatives.

Another example of crucial utility engagement is NACWA's ongoing work to advance responsible regulatory improvement concepts. When the new Trump Administration and Congress established regulatory reform as a top priority, NACWA formed a small workgroup of utility representatives to guide the Association's work in developing regulatory improvement ideas. These members engaged seriously and thoughtfully in developing a comprehensive list of their ideas, which would help utilities to more effectively and efficiently serve their communities, while also advancing environmental and public health protections. NACWA has already had positive conversations with the EPA about implementing a number of these improvement ideas, but again, this would not have even been possible without the direct engagement of individual utilities.

NACWA is an organization that brings together the collective voice of the national clean water utility community and serves as a powerful platform to advance advocacy goals. But our success as an association is ultimately based on the work and success of our individual member utilities. Our collective victories are in truth the victories for all the utilities who engage directly in the advocacy process.

We are both very grateful that even with all of the day-to-day work required to run a utility, many of you still find the time to send a letter to Congress about a particular bill or weigh in with a comment to the EPA about a specific regulation—and it is ultimately all of these little efforts that help make the huge difference.

So please accept our thanks for all you do, and allow us to share this: remember that when you pick up the phone, sign an invitation, read up on a bill, or fire up your computer for one more shot at the subtle yet overtly demanding sentence in that letter, your personal piece of advocacy engagement can be—and in many ways is—even more powerful than just having NACWA staff pounding the sandstone and marble on Capitol Hill. 💧

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David St. Pierre is the Executive Director of the Metropolitan Water Reclamation District of Greater Chicago and has more than 25 years of professional and leadership experience in the water sector in various cities. He also serves as Treasurer for NACWA's Board of Directors.

Nathan Gardner-Andrews is NACWA's Chief Advocacy Officer. When not trying to keep up with NACWA's amazing advocacy staff, he enjoys wine tastings with his wife and horsing around with his two young sons.

How to *Effectively* Engage with Your Member of Congress

by Kristina Surfus

As a national advocacy association, NACWA is uniquely suited to advance national water policies that work for clean water agencies. Meaningful national conversations about clean water issues and how best to advance them is critical. And with a national membership representing 46 states and spanning every region of the country, NACWA is in a unique position to reach diverse members of Congress and help bring about change. However, while a national voice for the sector is critical, it's the local stories that often affect Congress the most.

As someone who has worked on Capitol Hill, I can tell you that hearing from the local leaders and concerned citizens in a Senator's or Representative's home state or district is critically valuable. Stories and information from a home community put abstract policy decisions into focus and elevate issues like clean water, even while lawmakers are deluged by a flood of issues all vying for Congressional action.

For an article like this—on engagement with legislators—let me begin by encouraging a virtue: patience. Legislation usually moves slowly, and it can be difficult to see or measure the direct impact of Congressional outreach over time. Given this sometimes glacial pace, I must stress the



importance of both parties in a meeting—local citizens and Congressional members or staff—leaving the meeting feeling positive about the discussion, preferably with a memorable exchange or anecdote that indelibly imprints into the staffer's or member of Congress's mind. While one particular meeting may not lead to direct action, it can frame an issue or tee up an important discussion, for when a window of opportunity opens, *a bill can move with shocking speed.*

Having held countless meetings myself as a congressional staffer, let me offer a few tips and insights for effective meetings with your local congresspersons or their staff.

Have concise talking points prepared.

Meetings are usually scheduled for thirty minutes and are commonly cut short on hectic days. Going into meetings, take cues from the staffers—do they seem genuinely glad for the chance to talk or as if they would rather be somewhere else? Either way, staffers should allocate their full attention to their meetings, but you can adjust your delivery accordingly. Having concise talking points about the role of your agency; local issues, accomplishments and investments; and key “asks” for Congressional action is imperative. By laying this groundwork early, you can pique staffers’ interest and see what is of most interest to the Congressional office, hopefully spurring good conversation.

Excite staffers with local stories.

It can be hard to remember sometimes, but most members of Congress—and staff—typically came to their roles to solve problems. Tap into that positivity with information on how you are impacting and improving your community and let them know what they in Congress can do to help your efforts and serve your community better.

Establish yourself as a subject matter expert and ready resource.

Few Hill staffers have expertise in Clean Water Act issues, and even fewer have strong backgrounds in areas that impact the clean water sector, such as science or municipal management. A fundamental strength of a good Congressional staffer is the ability to obtain, analyze, and act upon new issues and critical information quickly. Make sure you leave your card with staffers and let them know they can call you to provide perspective or local ground-truthing if any relevant issues arise. Should they do so, respond quickly—even if you don’t have a full answer—and reach out to NACWA to see if we are engaged on the issue. It helps to make clear that you are a member of NACWA, and that we are also available as a resource. Some staff will prefer to reach out for local input, and others may prefer to work through a national organization.

Expect young staff.

Legislative Correspondents, who often take meetings, are often fresh out of college and advance to the role of Legislative Assistant within a few years. That means you may travel to DC to meet with someone who may be no older than your children! Don’t feel slighted—one universal truth about DC is that it’s a great place for a young person to gain incredible responsibility quickly, so Hill staff generally skew very young. That doesn’t mean they don’t understand or don’t perform their jobs—to hone in on important issues and elevate them with their boss—well. Staffers have a direct responsibility to take important meetings, synthesize key points, and communicate them to their member of Congress soon afterward—via facetime, in a daily memo, or the like.

Extend an invitation.

Whenever members of Congress go home to their state or district—often most weekends and holidays, and over the summer recess—staffers are tasked with filling their bosses’ itineraries with local events, such as meetings and tours. These are often planned by local (in-district) staff, with input from legislation (DC) staff, to cover pertinent issues and subjects. Invite staffers and their bosses to tour your facility, attend a groundbreaking, or meet with your staff.

Reaching out to Congress is part of the role of clean water leadership to educate and inform. This is one more way to help the public respect the work of local clean water agencies and understand that the work of the municipal clean water sector is truly vital to any community’s well-being, economy, and public health. 💧

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Kristina Surfus is the Director of Legislative Affairs at NACWA. She graduated from Boston University and the University of Wisconsin-Milwaukee, and previously worked for Wisconsin Senator Tammy Baldwin.

PANDORA'S BOX *of Wipes*

by Frank Dick
& Cynthia Finley



There was a time when nobody talked about how we wiped our backsides. Back when toilet paper was standard, and wipes were just for babies. It was a *Wipe-less Golden Age*, marked by coiled phone cords, TV rabbit-ears, and the Sears Catalog. The world has changed.



The times are marked by an astounding array of butt-nurturing hygiene products, from premium fragranced wipes to toilet paper sprays to bidet toilet attachments. It's a multibillion-dollar industry, larger than ever, complete with its own behemoth marketing machine churning out clever ads that target every segment of society from toddlers to seniors.

Of these products, wipes have become the most popular. Naturally, the wipes marketing machine could make any global corporation's envious, creating product saturation in market segments where it just *shouldn't* (try doing an internet search on "Dude Wipes" or "Shittens" sometime for a laugh or a gasp, depending on your sense of humor). Unfortunately for utilities, this naked consumerism has come with an unexpected price tag.

The problem? Wipes are cute, but they're stubborn. They don't break apart in water like toilet paper does, and this stubbornness costs utilities

billions of dollars every year to deal with them. While flushing one little wipe seems to be no big deal, as clean water professionals, we know better than most that (1) flushes add up, and (2) nothing truly disappears when flushed. The one little flushed wipe, teamed up with its legions of stubborn siblings, transforms into an impossibly formidable problem for even the largest of utilities.

Ask any wastewater utility professional. The headaches are large and run the gamut: unclogging pumps and equipment; disposing of wipes material in landfills; using excess electricity for clogged pumps; replacing damaged equipment; and not to be forgotten, of course, sewer overflows and backup from "fatbergs"—i.e., the result of wipes combining with fats, oils, and greases (FOGs) to form a new breed of pipe monster. Add up the spending, and the little flushed wipe is to wastewater utilities as Godzilla is to Tokyo. This is no exaggeration, considering that the wipes market has increased tremendously over the last decade and is only expected to *increase even more* in the future.

Absurd as it sounds, the little wipe has opened a large battlefield on the clean water landscape, as the status quo threatens heavy losses for all clean water utilities, unless we are successful in (1) keeping non-dispersible wipes out of the sewer system and (2) ensuring that wipes can only be labeled “flushable” if they disperse as quickly as toilet paper.

Evolution of a Major Headache- Advocacy Issue

The issue may now be coming to a head (pardon the pun), as the “wipes issue” has become a dark-horse media darling. Local papers and TV first covered the story around 2008, which is when NACWA first started receiving complaints from its members. By 2013, wipes were in *USA Today* and the *Associated Press*, reaching new heights when an eleven-ton fatberg was discovered in a London sewer. Now, the media coverage is somewhat regular. *The Dr. Oz Show* even featured the problem, with the Doc visiting a treatment plant in New York and proclaiming, “After seeing all these wipes, I’m officially switching back to toilet paper!”

NACWA has been working with other wastewater associations on the wipes issue for many years, partnering closely with the Water Environment Federation (WEF), the American Public Works Association (APWA), and the Canadian Water & Wastewater Association (CWWA). NACWA and these other associations have worked with INDA (the trade association of the nonwoven fabrics industry) to try and address the two key issues with wipes:

- ***Wipes that are labeled “flushable” must disperse quickly enough after flushing to prevent problems with sewer and wastewater treatment equipment.***
- ***Non-flushable wipes should be clearly labeled, “Do not flush.”***

The coalition of associations has gone through several collaborative processes to try to address these two issues, with mixed results. It succeeded in developing a new Code of Practice (COP) for labeling non-flushable wipes, which recommends that a clear “Do not flush” logo be placed on packages at the point where wipes are removed, so consumers will see the logo every time they use a wipe.

Unfortunately, the coalition did not find consensus with the wipes industry on a standard for determining whether a wipe is in fact flushable. A process to update INDA’s current flushability guidelines stalled and eventually ended, as did an International Standards Organization (ISO) process to develop a flushability standard. However, the ISO process did bring together wastewater experts from around the world to form





the International Water Services Flushability Group (IWSFG). The IWSFG has developed draft flushability standards* to ensure that sewer systems are protected.

So now a sound standard exists for determining which wipes are flushable, along with solid criteria for labeling non-flushable wipes—the only problem is that both are *voluntary*. The best chance of making these voluntary measures mandatory is likely through state and local legislation, which could eventually lead to federal legislation.

Local Legislation, National Landmark

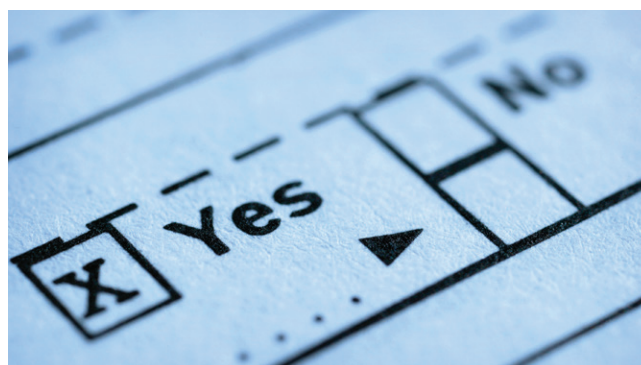
The District of Columbia began this process late last year, with DC’s Council unanimously passing the first wipes legislation in the country. The bill addresses both the labeling of non-flushable wipes and the criteria for determining whether a wipe is flushable.

*These standards are available at www.iwsfg.org

“After seeing all these wipes, I’m officially switching back to toilet paper!”
— Dr. Mehmet Oz, *The Dr. Oz Show*

Maryland, Minnesota, and New Jersey have also recently considered wipes bills. Maryland’s bill, modeled on DC’s, is passing the Senate but not making it out of the House committee. The Senate vote fell straight along party lines, with Democrats voting for the bill and Republicans voting against it. This should be a bipartisan issue, with both parties supporting protection of our wastewater infrastructure and all citizens, whether they use public wastewater services or septic tanks.

NACWA is now developing model state legislation and supporting materials that can be used in any state or municipality. The Association’s goal is to have its members advocate for legislation in their own states, with NACWA providing support for these efforts. Proponents envision wipes legislation taking a path similar to the legislation that banned plastic microbeads in cosmetic products. Microbead bans were passed by eleven



states and numerous counties and municipalities before bipartisan federal legislation quickly passed Congress in 2015—notably, with the support of the cosmetics industry. If enough states pass legislation dealing with wipes, then federal legislation can follow, or the wipes companies will be pressured to change their products.

“...wipes are already being produced in Japan and Spain that break apart very quickly, even better than some brands of toilet paper...”

United States need to step up and improve their wipes manufacturing technology. Alternatives to wipes have also been developed, usually in the form of a liquid spray for toilet paper, such as Aquinelle™.

Since the wipes problem will only be solved if consumers stop flushing non-flushable wipes, companies that produce wipes must take the first step in consumer education: clearly labeling all their non-flushable wipes with “Do not flush.” Coordinated public education campaigns are needed, and wipes companies have the financial capability to conduct them. A public education pilot program in Portland, Maine, in 2015 showed that getting the message out could reduce the number of wipes flushed, but that the message also needs to be delivered consistently over a prolonged period of time to stick. NACWA wishes to develop a comprehensive public education campaign with the wipes industry once the parties involved can agree on which wipes can and cannot be flushed.

In the meantime, utilities are doing what they can to educate their ratepayers about responsible flushing. Many utilities have developed their own effective campaigns, asking their customers to only flush the “3 Ps”—*Pee, Poop, and (toilet) Paper*. NACWA’s *Toilets Are Not Trashcans* campaign materials are also available free of charge to any utility that would like to use them.

Collective Advocacy, Individual Solutions

Pressure is also being applied to the wipes industry by the Federal Trade Commission (FTC), and class action lawsuits on behalf of consumers and utilities are making their way through the legal system. For example, Nehemiah Manufacturing Co. and Procter & Gamble settled a lawsuit involving “Kandoo” flushable wipes, allowing consumers to receive a refund for a portion of the purchase price of these wipes.

Legislation, however, is likely the only way to make the entire wipes industry produce better flushable products and stop calling wipes “flushable” unless they break apart quickly in sewer systems. This can be done - wipes are already being produced in Japan and Spain that break apart very quickly, even better than some brands of toilet paper. For everyone’s sake, companies that sell wipes in the





The Future of Toilet Training the Wipes Issue

The future somehow came into focus through a recent anecdote about a certain utility advocate's fifth-grader. A common phenomenon when kids are involved. On her own initiative, the young girl took some *Toilets Are Not Trashcans* stickers to her elementary school class and introduced the wipes issue to classmates. Her mother was encouraged—both as an advocate and as a parent—when the young girl came home empty-handed, with a pointed request for more stickers. It seemed everyone in class wanted them, and were also clamoring for *Toilets Are Not Trashcans* t-shirts.

Obviously, one child's successful show-and-tell does not a paradigm shift make, but for utility advocates, it does make for an encouraging case study (and a great anecdote), since one can reasonably surmise that the message resonates on some basic, emotional level (so simple even a child could understand). And the Maine public education campaign is certainly evidence that the public will listen.

Solving the wipes problem may not happen overnight, but with a combination of public education, proper labeling on wipes packages, improved flushable wipes, and wipe alternatives, the problems can be significantly reduced for utilities, and the revenue that utilities would otherwise be spending to get wipes out of sewer systems, can be put to better use. Eventually then, we can all finally close that box of pipe chaos once and for all. 💧

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Frank Dick is the Sewer and Wastewater Engineering Supervisor for the City of Vancouver, Washington's Department of Public Works. There he oversees the wastewater engineering and administration functions, as well as the planning and capital projects, for Vancouver's sewer and wastewater treatment systems.

Cynthia Finely is the Director of Regulatory Affairs at NACWA. She is a graduate of Texas A&M University and enjoys spending time with her husband, four kids, two dogs and cat.

CLEAN WATER IMPACT

BY THE NUMBERS

what happens when

THE WATER GOES OUT?

JUST
ONE
DAY

OF WATER SERVICE DISRUPTION

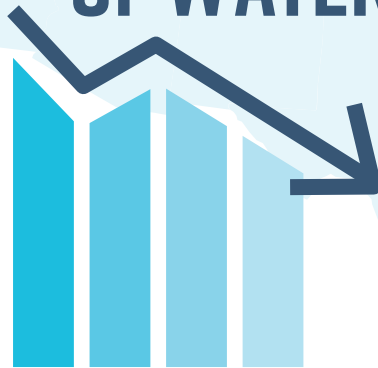
would result in a

\$22.5 BILLION

loss in GDP

\$43.5 BILLION

loss in sales to businesses



for industries reliant on water, sales drop by

75%

\$230

in sales
per employee





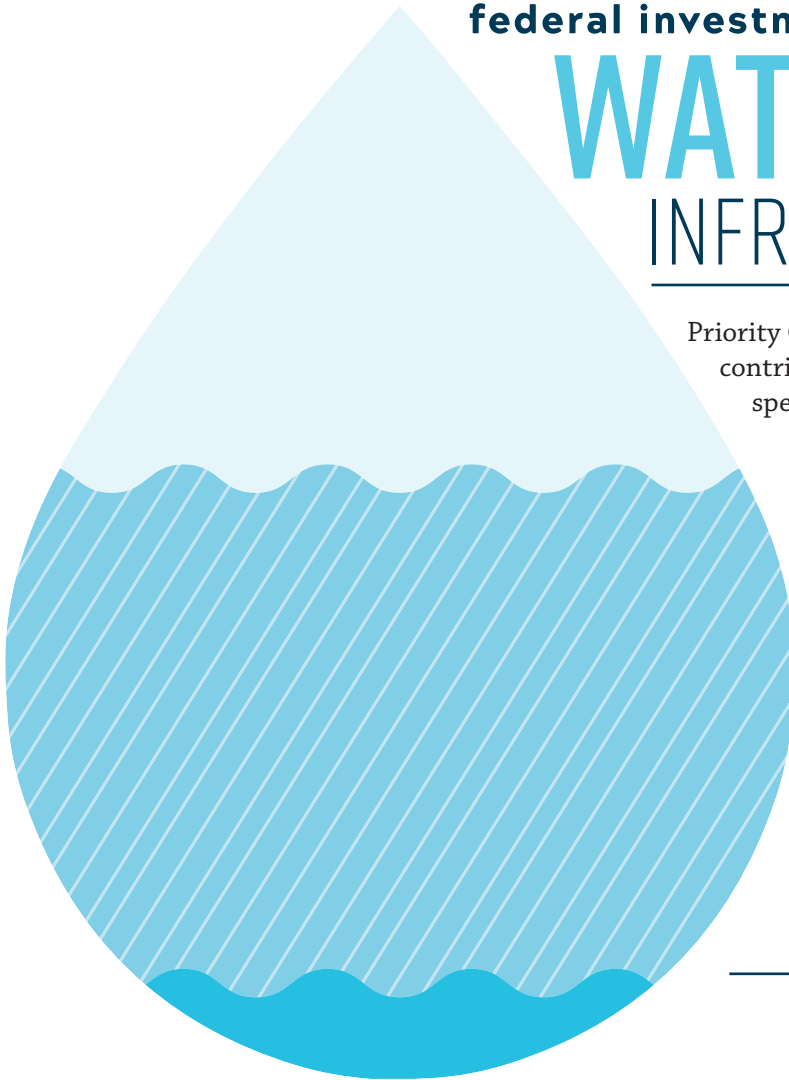
Water is crucial to the health and survival of every citizen, *every day*. Naturally, water infrastructure should be funded at the federal and state levels with an emphasis and priority it is presently not receiving. Meanwhile, water pipes, drains, sewers, levees, etc. are aging, outdated and inadequate in many communities.

federal investment in

WATER

INFRASTRUCTURE

Priority Gap: Over the years, the Federal Government's contribution to total water infrastructure capital spending has decreased significantly.



63% IN 1977



9% IN 2014

**CLOSING THIS GAP
saves businesses**

\$94 BILLION

in annual sales and

505,000 JOBS

over the next 10 years

Closing this *priority gap* in water infrastructure investment would result in **\$220 billion** in annual economic activity and result in **1.3 million** jobs annually.



THE MISSION IS THE MESSAGE

WHAT THE CLEAN WATER SECTOR CAN LEARN FROM THE TEACHERS' MOVEMENT

by Andrew Bliss & Anthony Viardo

It's Monday morning. Mrs. Kenworthy is up before 4:30 am. It's still dark when she feeds her kids and gets them ready for school. She's running behind, but she's ready for her class because she sacrificed her Sunday to grade papers and write a lesson plan. In the classroom, she laments the shortage of pencils. It'll be tough. Luckily, she bought boxes of pencils during her last grocery run. Her students, for this week at least, will have enough.

Mrs. Kenworthy was Anthony Viardo's teacher back in third grade. Her son, his close friend, told him about the pencils. Today, the nationwide teachers' movement is alive and well because of Mrs. Kenworthy and the thousands like her. Their plight widely resonates in the court of public opinion, a far cry from the early 1900s, when Margaret Haley gave birth to the movement by delivering a landmark convention speech ("Why Teachers Should Organize") decrying, among other things, the fact that teachers were invisible, disrespected, and not allowed to be free thinkers.

Over the last few decades, the teachers' movement has made impressive gains, especially in the area of mass communications. Political considerations aside, on the communications front, the teachers' movement has been successful; on the advocacy communications front, *wildly successful*. Consider that their issues are perpetually focused on by campaigns and educator groups are routinely seated at prominent government bargaining tables. Their issues are mainstays on news agendas, and in almost every media format—entertainment, informational,

news—teachers are almost always portrayed as sympathetic figures, even when a movie is titled, *Bad Teacher*.

And the advocacy results, whether directly or indirectly caused by the movement’s communications, are indisputable: education regularly tops all non-military spending in the Federal Government’s discretionary spending budget (\$70 Billion, 6% of the budget in 2015).

Taking Notes

It would be instructive for the clean water sector to take a close look at the teachers’ movement. The parallels between the teaching and clean water sectors are unmistakable. Both are heavily dependent on public funding, and both heavily regulated by government. Both provide a public service that society cannot do without. And both—as a “cause”—are fueled by a gross inequity: that is, the *enormous gap* between each sector’s crucial role in society’s survival and the importance that each receives by way of public support, acknowledgement and yes, public investment. The crucial difference between the teachers’ movement and the clean water cause today, however, is that the inequity that exists

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“The teachers’ movement today is a public and political force, but it wasn’t always that way.”
.....

for educators is almost universally acknowledged by the public—to the point of *outrage* in some quarters—while the inequity that defines the clean water cause is . . . not.

I mean, who *hasn’t* heard of the plight of local teachers, whose classes are overcrowded to the point of bursting, whose classrooms aren’t cooled or heated enough to withstand the elements, whose resources are woefully inadequate, to the point that they’re forced to use their own (pittances of) salaries to buy crayons and construction paper for their charges? Some clean water advocates, communicators, and stakeholders would sell their souls for that kind of placement in the public or governing arena. Several would say they’re already there.

But clean water advocates have reason to be encouraged. The teachers’ movement is a public and political force today, but it wasn’t always that way. We can remember a time, not too long ago, when teachers were even more routinely dismissed, ignored, or discriminated against (imagine the backlash, and the political careers that would end, if that were done today). This should motivate stakeholders in the clean water cause and encourage them that this kind of communication success can be built, and similar advocacy gains achieved.





Mission-focused Messaging

Of all the messages built into its advocacy platform, the teachers' movement is especially potent in its "mission-focused" messaging: that is, the messaging that begins and ends at "the inequity"—or the injustice that fuels the mission or cause. It is here that the most persuasive messages break through into the public consciousness, where the tide of public opinion can often be turned and the machinery of government can be leveraged.

In describing the inequity for teachers, wording and style differ according to medium, but the fundamental elements remain the same:

Teachers perform a vital function. They teach our kids, and without child education, we would all suffer. We cannot thank teachers enough for the wonderful service they perform for all of us. And yet, teachers are not compensated well for what they do, and their sector/industry as a whole is underfunded.

One can easily spot the parallel inequity for the clean water cause by simply substituting a few words in the above statement:

Clean water professionals perform a vital function. They clean and deliver our water, and without water, we would all suffer. We cannot thank these water professionals enough for the wonderful service they perform for all of us. And yet, clean water professionals are not compensated well for what they do, and their sector as a whole is underfunded.

From this inequity, one can envision the elements of an advocacy communication strategy.

What We Do

The prominent focus of the message is the teachers' movement's most fundamental truth: movement advocates simply talk about the importance of "what they do." The inequity then becomes so self-evident that the call for action practically gives birth to itself.

An especially potent quality in the (inequity) message surrounding "what teachers do" is its visceral elements. These are elements that make emotional connections—beginning with "our kids"—and can thus influence the public on an emotional, passionate level. And in any movement, passion is key.

When describing the profession of teachers, advocates have many messages at their disposal. They could communicate (1) that teachers educate youngsters, helping them obtain better jobs when they're adults, (2) that teachers account for a large portion of the job market and thus have an outsized impact on the economy, or (3) that teachers keep our children safe while parents go to work. Each message would be equally accurate. However, I would argue that all things being equal, the third would be more likely to influence the general public and compel them to act, because it is more visceral in nature. This kind of messaging can be seen in the speeches and signs of countless grassroots demonstrations, where, among the many ways to describe the profession and mission of educators, the *most visceral* ones are often most repeated in media and in the public forum, moving the needle much more effectively than other types of talking points.

And the more this visceral messaging is borne out, the more the profession of teacher transcends the definition of a "job" to become something more. What teachers do is no longer just necessary, it's *noble* too. The public begins to realize (rightfully) that these professionals are passionate about educating, often sacrificing themselves to serve our families. Listen to any teachers' movement speech or rally address, and this is where the applause lines are. Read any of the picket signs and flyers, and this is where the bold letters lie. And read through the movement literature over time, and these are the messages that endure over decades.

Perhaps this is the kind of impact-messaging that the clean water cause needs to emphasize, distill, and strategically develop. As generally, the *underlying truth* of what water professionals do isn't immediately apparent, nor is it communicated well. How many times have we, as water professionals, explained "what we do," then had

to detail it some more, and then explained it *again*, before others—even fellow water professionals—finally stopped, considered, and realized that their very survival depends on how well we do our job?

Who We Are

Again, aligning with the movement's most fundamental truths, advocates simply talk about "who they are." And here again, the inequity is exposed on a strong, visceral level. Consider the second part of the mission-focused message:

We cannot thank teachers enough for the wonderful service they perform for all of us. And yet, teachers are not compensated well for what they do, and their sector/industry as a whole is underfunded.

These statements in various forms, often repeated for decades and supported by countless real-life stories, have become conventional wisdom. On an emotional level, one cannot even disagree without some measure of guilt. Teachers are people just like us, after all, performing a noble service for our communities. Admirable. They should be thanked and respected, as we would like to be thanked and respected were we to have that job. Once we've (rightfully) admired and empathized with them, we realize that teachers are underappreciated, and in many ways, disrespected—the fact that they are underpaid is merely a consequence of the real inequities here. In advocacy terms: *victory*.

From this, we can (and should) draw the parallel message elements for the clean water cause: Water professionals are *just like you*, the bluest of the blue-collar workers, shedding blood, sweat, and tears 24/7 to clean *our water* supply every day. They work *thanklessly, behind the scenes* to support our families, who will never even have to think about where their water

comes from or where it goes once it disappears down the drain. And the visceral aspect of “who they are” in this case? *Their toil and sweat equals our convenience, cleanliness, and health.* We cannot thank them enough.

Movements and Mrs. Kenworthy

Movements come and go, as do advocacy platforms. What gives one lasting power while another fizzles and fades? Many factors are at play, sure, but a compelling case can be made that effectiveness in mission-focused mass communications would be among the more significant reasons.

Through the decades, the teachers’ movement has been fortunate to have distilled a solid message for its mission, one that’s tied closely to its basic truths and has propelled it to become the influential force that it is today. Similarly, the clean water cause has no shortage of truth for its messaging. The elements of our mission’s message are right in front of us, just waiting to be distilled and used. Now if only we can find our own Mrs. Kenworthy. 💧

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Andrew Bliss is the Community Outreach Manager for Capital Region Water, the steward for stormwater, wastewater and drinking water services for the City of Harrisburg, PA, as well as surrounding municipalities. He also serves as Vice Chair of NACWA’s Communications & Public Affairs Committee.

Anthony Viardo is the Director of Communications & Marketing for NACWA. He entered the water sector after a career in the publishing industry, branding authors and titles for Penguin Random House, HarperCollins and Sourcebooks, Inc., among others. He enjoys life in the DMV with his wife and son.

It’s Monday morning. Mrs. Johnson is up before 4:30 am. It’s still dark when she feeds her kids and gets them ready for school. She’s running behind, but as a top Utility Systems Operator III, she’s had extra training over the weekend, and is ready for an emergency call. There’s a pipe breach somewhere on the other side of town, and she’ll have to get her hands extremely dirty to keep the water flowing. It will be tough. But for this week at least, her community will have enough.





Who *moved*

*The Role of Science in
Clean Water Advocacy*

“You can say the Earth is flat because we have free speech, but our Constitution doesn’t grant that anything you say is correct.”

—Neil deGrasse Tyson, Astrophysicist

my algae?

by Emily Rimmel

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Someone somewhere officially dubbed April 22nd “Earth Day”—a day to advocate for Mother Earth—so of course, being my nerdy, Earth-loving self, I had to participate in the celebrations. On Washington, DC’s National Mall, I witnessed many demonstrations that day. All fun, all scientifically nerd-tastic. Imagine this: thousands of people locked arm-in-arm (figuratively) marching with a bunch of modern-day science gurus—thick glasses, lab coats, test tubes, the works—took to the streets to hashtag march for science. (#MarchForScience—there, okay?).

Tongue-out *blah!*-ing Einsteins were resurrected in cardboard cutouts, giant hand-drawn Lorax cartoons were “Speaking for the Trees,” O-Mg posters representing key elements on the periodic table floated above the crowd, and signs read, “So Bad, Even Introverts Are Here.”

The scene was serene: science everywhere.

Fellow nerd-friends took to the streets in more than six hundred cities around the world, demanding that the cacophony of science naysayers cease their political assault on science and urging their leaders to fund scientific research initiatives.

Now, scientific theories have been challenged by skeptics throughout human history, but conventional wisdom says that nowadays, we’ve reached a point where science is, well, science. Period. I mean, what is there to say about “flat-earthers”—those who deny the Earth is round—except that they’re supposed to be considered “fringe”? Enter politics, or more precisely, a hyper-partisan political environment, and suddenly science becomes *optional*. But not for us. Science is non-partisan and plays a pivotal role in clean water advocacy.



The mere occurrence of a public, pro-science global demonstration should cause folks to pause and think—what is our role and responsibility, if any? In our minute sliver of the vast scientific landscape, water professionals must continue to stress the importance of science in clean water advocacy. So, ask the question please: *What does this effort look like?*

Questions Raised

Biologists, chemists, engineers, and hydrologists, as well as other subject matter water experts, occupy a complex and multi-layered discipline. For the sake of our mission, clean water scientists must rigorously advocate for objective science that has replicable scientific methodology, produces meaningful statistics, and is ultimately vetted by the peer community. Scientists must also be willing to embrace innovative techniques and to continue to educate and inform the public and policy decision-makers as to the ongoing efforts to improve water quality. This will avoid arbitrary or non-scientific policy outcomes.

Case in point: Recently, the US Environmental Protection Agency (EPA) proposed at least two regulations that seem to challenge what some

“Enter politics, or more precisely, a hyper-partisan political environment, and suddenly science becomes *optional*.”

clean water experts (and advocates) would consider a robust scientific approach aimed at protecting human health and the environment. It is here, in instances like this, that the role of science—not politics—in conjunction with the advocacy efforts of municipal clean water professionals is key.

For the Love of Science

Nerdy Ecological Example #1:



Cyanobacteria, or blue-green algae, are common in all freshwater ecosystems. When abiotic (temperature, pH, sunlight) and biotic

(zooplankton grazers) conditions are ripe, these “algae”-disguised bacteria explode in population, outcompete other algae, and create what is known as a harmful algal bloom (HAB). Cyanobacteria are also toxigenic—meaning these species produce toxins for biological reasons not readily understood by many aquatic ecologists. During these bloom conditions, cyanobacteria deplete the oxygen in the ecosystem and cause a variety of surface water problems (e.g., fish kills, abhorrent odors, and scum build-up).

That’s the technical, roundabout way of saying algae may be fascinating to ecologists, but these bacteria critters can cause some pretty nasty water quality problems for us clean water professionals (swim party, anyone?).

Wonky Regulatory Reaction #1

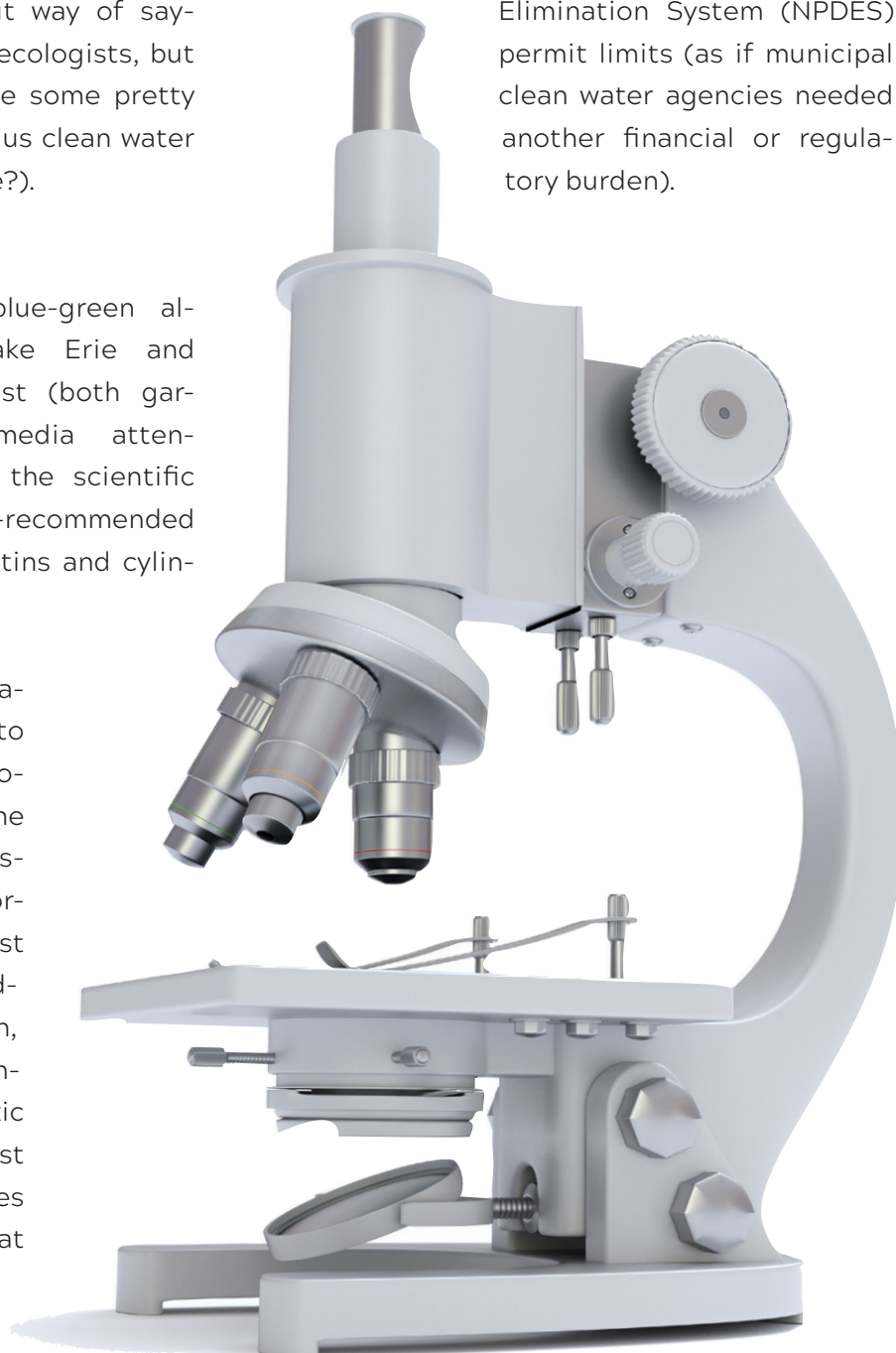


Following severe blue-green algal blooms in Lake Erie and along Florida’s coast (both garnering national media attention), the EPA requested that the scientific community weigh in on their draft-recommended concentration levels of microcystins and cylindrospermopsin in surface waters.

These recommended concentrations were an effort by the EPA to curb recreational exposure and potentially disrupt or eradicate the environmental conditions that foster harmful algal bloom (HAB) formations. Although the EPA most likely intended to provide nonbinding guidance to states about when, where, and how to close swimming beaches during these toxic blooms, the current draft request goes beyond just closing beaches to including explicit language that would allow states to create

additional regulatory requirements on municipal discharges.

Municipal clean water utilities do not discharge cyanobacteria or cyanotoxins. Therefore, establishing ambient water quality criteria (AWQC) for cyanotoxins will actually not reduce or eliminate cyanobacteria populations or cyanotoxins in water resources. And yet, this regulatory action would create considerable impact on the clean water community by potentially driving National Pollutant Discharge Elimination System (NPDES) permit limits (as if municipal clean water agencies needed another financial or regulatory burden).



EPA acknowledged that “nutrients are key environmental drivers that influence the proportion of cyanobacteria in the phytoplankton community, the cyanobacterial biovolume, cyanotoxin production, and the impact that cyanobacteria may have on ecosystem function and water quality” in their request for input. However, the science that the EPA is relying upon in this instance has notable flaws in the data and is not holistic in reining in the most obvious nutrient contributors (e.g., nonpoint source contributors).

Lawyers often say bad facts lead to bad case law. The same holds true for science: poor scientific research can lead to bad regulations.

Nerdy Limnological Example #2:



Freshwater contains a variety of dissolved ions (salts). Simply put, the more ions in the water, the better the water conducts electricity.

Specific conductivity is the manner of measuring salinity in water. Elevated conductivity

levels can negatively impact fresh water ecosystem health at the most basic trophic levels because certain species cannot tolerate or survive in habitats with high salinity.

Straightforward, right? Not exactly.

Conductivity is a creature of confounding factors. Individual ions react differently in the presence of other ions. Surface mining, road salt de-icing activities, brine discharges, industrial discharges, and the like can add to increased salinity in freshwater systems. Further, aquatic invertebrates have varying levels of salt tolerance or intolerance.

Wonky Regulatory Reaction #2:



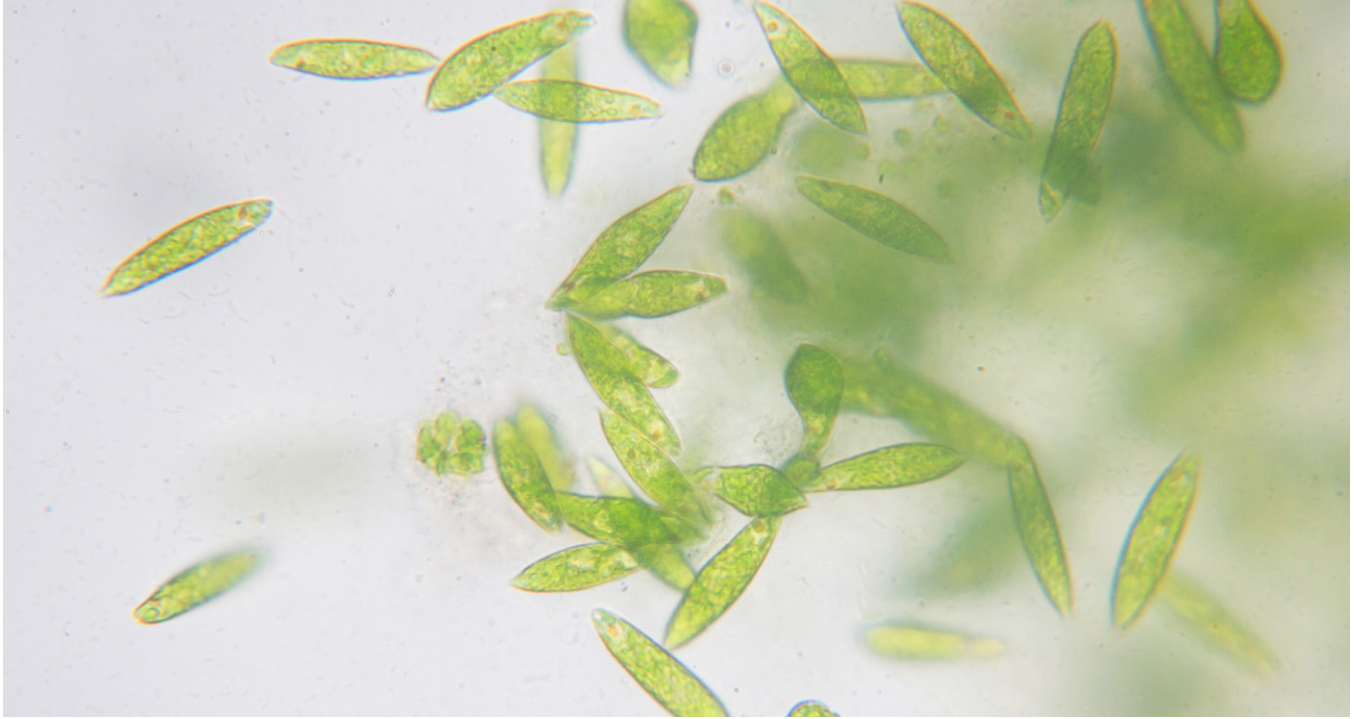
To protect freshwater stream health and promote macroinvertebrate population survival, the EPA requested public comment on

its draft Field-Based Methods for Developing Aquatic Life Criteria for Specific Conductivity.

The draft Field-Based Methods collected field observation data from a few selected ecoregions across the country and used complex modeling programs to determine the threshold conductivity levels based on whether a macroinvertebrate species was present or absent in streams.

Clean water scientists should be extremely concerned with the EPA’s draft Field-Based Methods because these methods deviate from the EPA’s own acute toxicity manual: they crank unreliable field sampling observations through complex statistical models in order to estimate overall stream health. The result is an incomplete, although statistically significant, correlation





between macroinvertebrate absence and high salinity. The underlying science relied upon should detangle confounding factors and is ultimately worthy of more study.

Before water quality criteria are established for specific conductivity, which would unfairly burden the municipal clean water community, the EPA should consider a more robust scientific approach that includes a combination of field observations, mesocosm experiments, and the standardized laboratory toxicity analyses—even if these studies are scientifically complicated.

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“Situations like these demonstrate where the real chasm has emerged within the clean water regulatory landscape.”

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A Symbiotic Relationship

Situations like these demonstrate where the real chasm has emerged within the clean water regulatory landscape. There is a true need for symbiotic relationships between clean water scientists and clean water advocates to work together and foster holistic, complete, and objective-based science to serve as the basis of our regulatory initiatives. Neil deGrasse Tyson may have said it best: “science is a foundation on which you base your politics,” a statement that implicitly warns that political interference in science can lead to dangerous policies and regulations.

Water resource regulations based on high-caliber research, thorough experimentation, and empirical evidence will best ensure the protection of public health and the environment. This is the ongoing advocacy role of a clean water scientist—cardboard, tongue-out Einstein notwithstanding. ●

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Emily Rimmel is the Director of Regulatory Affairs at NACWA. She holds a BS and MS in Zoology from the University of Oklahoma, and a JD from Vermont Law School. She is a total water nerd and zooplankton enthusiast.

Clean Water

“It is unfortunate when men cannot, or will not, see danger at a distance; or seeing it, are restrained in the means which are necessary to avert, or keep it afar off. ...[it is to our advantage] to make them believe, that offensive operations, oftentimes, is the surest, if not the only (in some cases) means of defence.”

George Washington, (Letter to John Trumbull) 25 June 1799

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CLEAN WATER ADVOCATE Summer 2017

As ever, the father of our country had a great point. The language may perhaps be a bit patrician by today’s standards, and the English rather *Olde-ish* in its undertones, but the concept is so simple—the best defense is a good offense—and the point so timeless that any person in any walk of life can successfully apply it,

from the peewee league football coach to the Fortune 500 entrepreneur. As legal counsel in the clean water arena, I put forth that when it comes to issues that involve a court of law, clean water utility leaders should seriously take heed.

Despite its wide acceptance as good policy, the art of offensive legal strategy is rarely used by municipal utility leaders. Instead, utilities are often in a decidedly defensive position—litigating cases that are already brought against them by environmental groups, for example, or acting after an enforcement action by a regulatory agency. However, by going on offense as an approach to litigation, by being proactive in engagement and pre-emptive in avoidance, clean water utilities can establish predictable legal outcomes that favor the agencies and can set their own agendas for compliance moving forward.



On Offense

by Erica Spitzig

Proactive Litigation

Proactively litigating as a plaintiff may appear unattractive to municipal governments and clean water utilities. After all, litigation is resource-intensive, and political leadership may tend to believe that it creates the wrong impression. But hoping that an issue will resolve itself, or simply waiting to be sued before acting, can be even more costly and hazardous, putting utilities at a significantly greater risk of a negative decision. While it may not be appropriate in every circumstance, proactive plaintiff litigation affords a utility the crucial advantage of “framing the issues” from the utility’s point of view and can help address situations that would otherwise become problematic.

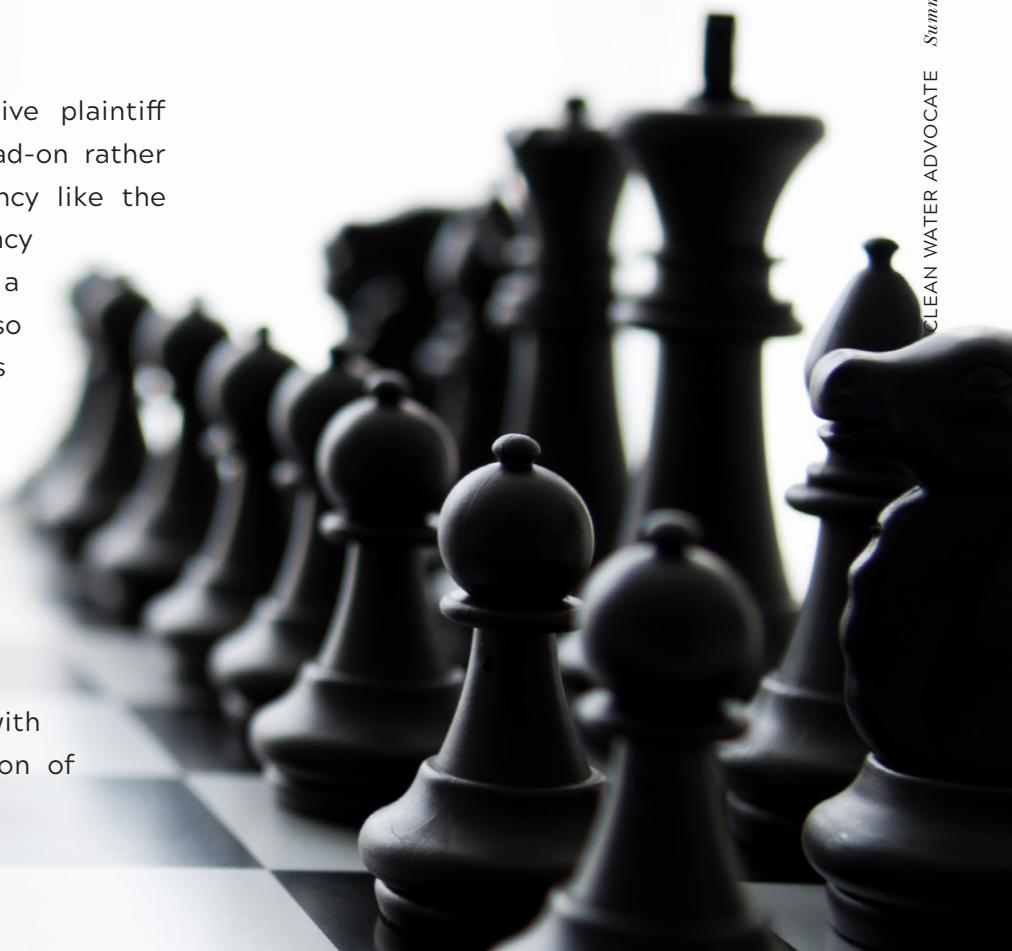
NACWA occasionally uses proactive plaintiff litigation to address an issue head-on rather than wait for a government agency like the Environmental Protection Agency (EPA) or a citizen group to bring a lawsuit alleging violations. Doing so allows NACWA to shape the issues that are before the court and to keep the court focused on the legal issues at hand, rather than allowing factual issues and alleged violations to muddy the waters in an enforcement action.

Recently, NACWA partnered with the Southern California Association of

Publicly Operated Treatment Works (SCAP) and other Californian organizations to challenge the EPA’s use of a controversial testing method in National Pollutant Discharge Elimination System (NPDES) permits in the state.

Rather than challenging a single permit, which would have little to no impact for other members nationwide, or waiting for a lawsuit to be brought based on the method—at which point, the challenge would no longer be “ripe”—

NACWA is proactively asking the court to find that EPA lacks authority under the Clean Water Act to use this method. Whether this particular litigation will be successful remains to be seen,



but acting as a plaintiff in this case has had the favorable effects of (1) allowing NACWA to shape what issues should be before the court and (2) avoiding a decision based on factual issues that are associated with a particular entity or permit. For all other agencies that may face these issues, this suit can serve as a pathway or a warning when an ultimate decision is reached.

“If you want to make peace with your enemy, you have to work with your enemy.”
—Nelson Mandela

Utilities can use a similar approach, particularly as it applies to matters of regulatory policy being advanced by the EPA or a state regulator. When states and the EPA issue new regulations, these regulations are open to public comment and are then subject to review in court. Sometimes, submitting comments is enough to spark a collaboration that resolves the issue. And collaboration should, of course, be considered a first option. When collaboration isn't working, however, the courts may be the only option and may actually help to open lines of communication with the other party.

Litigation may also have value where a utility (or utilities) are the target of regulation intended to solve a specific problem, but that utility is neither the cause of, nor the solution to, the problem. For example, perhaps a noncompliant or unregulated discharger upstream is creating an issue in your neck of the woods, and is passing

the regulatory buck on to your utility. The courts may be able to fashion a remedy through common law claims or creative thinking in a way that regulators cannot.

Utilities should be emboldened to see proactive plaintiff litigation as an option where the traditional solutions simply aren't working. Instead, the wise leader thinks ahead, sees where the collaborative process can break down, evaluates the probability of that outcome, and plans for instances where there is simply no opportunity for a meeting of the minds. Litigation then becomes a valuable tool.

Preemptive Partnership

Nelson Mandela once said, “If you want to make peace with your enemy, you have to work with your enemy. Then he becomes your partner.” This sums up the genius of Mandela, who applied an aggressive, proactive approach (working toward partnership) to the seemingly passive goal of peace. It would not be unwise then, to believe that if this strategy could help a future Nobel Prize-winner and South African president to end Apartheid and avoid civil war, then it can be an effective strategy for avoiding enforcement and litigation.

The strategic, proactive building of partnerships with regulators and environmental non-governmental organizations (NGOs) can allow utilities



to effectively set the regulatory and enforcement agenda and help them avoid the need for litigation altogether.

Something as simple as engaging with regulators and inviting them to your utility to understand your operations can ultimately help you build a relationship of trust in which regulators see your team as a group of reliable people who are often working toward their same goals. These trust relationships can help limit the impact of enforcement actions, if not avoid them. The same applies for working with local NGOs: a similar outcome can be achieved by simply partnering with them on programs and letting them know you're listening to their concerns.



In the spirit of Mandela—or the hapless Community Outreach Manager chanting, “regulators and environmentalists are people too!”—utility leaders should start building these relationships and partnerships before the problem develops. Don't just wait for regulators or citizen groups to come to you with an issue! Getting everyone in a room without the pressure of litigation can allow for frank discussion and ultimately allows utilities to set the tone and topic of conversation and more effectively establish goals based on the needs of the community. And in these situations, taking lawyers out of the equation can often lead to an atmosphere more conducive to trust and conflict avoidance.

Smart Utilities

Entertainment media have been a dual-edged sword when it comes to misconceptions of the legal world. The excitement and sexiness of the glorified legal drama paints a striking portrait of smart, good-looking, heroic legal eagles nobly carrying out their sworn duties in the treacherous legal system. On the flip side, lawyers are often portrayed as money-hungry jerks who will do anything for a buck (we do, in fact, charge by the hour). As always, the truth is somewhere in between (I'd like to think closer to the former than the latter) and much less dramatic.

As clean water professionals, we need to transcend quick, easy stereotypes of litigation and the legal field in general, whether those stereotypes be images of plaintiff litigation as a cut-throat tactic for the morally compromised or intimidating images of the legal system's errors, pitfalls, and consequences.

Developing a robust and proactive legal strategy is just smart—and practical. It will help your agency avoid surprises and establish priorities without waiting for the other shoe to drop. Ultimately, *all* agencies can stand to benefit when just one utility adopts an approach that is both aggressive when necessary and collaborative where appropriate. 💧

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Erica Spitzig is Deputy General Counsel for NACWA. She earned her JD from Georgetown University Law Center, and worked on clean water matters as an Assistant Attorney General for the State of Ohio and as an environmental attorney in private practice before joining NACWA staff.



Next Generation

ENFORCEMENT

NEW APPROACHES FOR 21ST CENTURY
CWA ENFORCEMENT

ENT

by Hilary Meltzer
& Amanda Waters

TURY

For more than two decades, the challenges public clean water utilities face in dealing with wet weather have provided fertile ground for state and federal enforcement action. Designs that were acceptable when many publicly owned treatment works (POTWs) were built, which allowed for sewage overflows in wet weather, do not meet current standards. Utilities are investing millions—even billions—of dollars designing and implementing new and modified wastewater collection and treatment infrastructure for wet weather, affecting rates for current and future generations.

The success of the Clean Water Act (CWA) can be largely attributed to the public clean water sector. NACWA members have been instrumental in protecting public health and the environment, and they are proud of the investments that have resulted in measurable water-quality improvement. However, across the nation our public utilities are being regulated to the point where the ends do not justify the means. The US Environmental Protection Agency (EPA) continues to focus on controlling point-source discharges with little consideration of the other sources of pollution and little regard for whether incrementally lower pollutant levels from point sources will lead to actual improvements in water quality.

And this is all happening at a time when a whole new set of environmental challenges never envisioned by the CWA—such as increasing impairment from nutrients, and severe storms and droughts associated with climate change—are combining with unprecedented economic and infrastructure pressures to squeeze utilities from all directions. CWA regulation and enforcement must adapt to successfully address these dynamic realities.

To see effective and sustainable progress both now and in the future, we must see a dramatic shift in CWA enforcement mentality and an openness to new approaches, new tools, and a new way of thinking about water quality. NACWA members are dedicated to improving the health and quality of our nation's waters, and they have earned the right to be, and accepted the responsibility of being, treated as partners in ensuring environmental and public health protections.



Advocating a New Approach

As the Trump Administration begins to set its enforcement priorities in the environmental arena, NACWA has been proactively meeting with the White House, the EPA, and the Department of Justice (DOJ) to share key insights and concerns about the current CWA enforcement paradigm, including growing challenges related to affordability and obstacles to pursuing sound solutions—solutions that will result in greater environmental benefits at a lower cost to ratepayers.

NACWA is emphasizing the flawed nature of the metrics the EPA currently uses to benchmark success, which focus on the quantity of enforcement actions, total value of penalties, and volume of overflow reduced. A more appropriate measure of success is net environmental benefit, which focuses on making the best fiscal and project or program choices to maximize water-quality improvement and public health protection. This ensures that the resources spent on complying with consent decrees have an adequate return on investment in terms of benefit gained and not only on penalty avoided.

NACWA is pursuing the following seven strategies in advocating for this new approach:

1. Focus on Compliance Assistance Instead of Enforcement

Although enforcement may be necessary in certain situations, the EPA should start by providing communities with compliance assistance first, and refer cases to the DOJ for formal judicial enforcement proceedings only if efforts at compliance assistance have failed. Likewise, the DOJ should exercise its enforcement discretion and reserve enforcement resources for recalcitrant entities. NACWA is urging the DOJ and the EPA to work jointly on this “assistance first, enforcement second” approach, not only in new matters but also with utilities currently under decree during renegotiation or modification proceedings (see below).

2. Rethink Civil and Stipulated Penalties

The EPA currently uses the value of penalties levied in a given year as a metric of its success on the wet weather enforcement front, as outlined in its publication, the Annual Enforcement Results Numbers at a Glance for Fiscal Year (FY) 2014. In addition to including penalties assessed in its Annual Enforcement report, every press release issued by the EPA and the DOJ announcing a consent decree emphasizes the penalty as a key

component of the decree. While penalties may be necessary from a diligent prosecution perspective, taking resources from a local community or government—which will have significant financial compliance obligations—should be viewed as a procedural necessity rather than a highlight of success for the program.

Indeed, the EPA and the DOJ should focus on minimizing penalties. The reality is that penalties paid to the US Treasury provide no tangible benefits to communities, nor do they result in any water-quality improvements. The EPA and the DOJ should also recognize the stigma associated with punitive measures: local decision-makers, stakeholders, and ratepayers may be less inclined to support the revenue needed to comply with the consent decree if the utility is portrayed as a bad actor.

Furthermore, public utilities do not profit from noncompliance. Thus, penalties do not serve the same objective as with private industry, that is, deterrence and leveling the economic playing field by eliminating the monetary incentive to avoid or postpone compliance. Municipal, state, and federal entities' stewardship of public funds—taxpayer and ratepayer dollars—further vital environmental and public health obligations. In

short, we are all in this together, and the focus on monetary penalties as a benchmark of success undermines this fundamental reality and leads to unnecessary confrontation rather than coordinated and collaborative solutions.

3. Adopt New, More Relevant Metrics of Success

The focus of the wet weather enforcement program has been to control certain categories of discharges, with little consideration of other sources of pollution. Similarly, scant attention has been paid to the actual water quality impacts on the receiving water of controlling wet weather discharges to lower and lower levels, often with insufficient scientific evidence to support whether these controls will improve water quality. NACWA is committed to changing this approach and shifting the focus to solutions that are more comprehensive and centered on net environmental improvements rather than only on reducing or eliminating specific discharges. This is particularly true with complex issues such as nutrients, of which nonpoint sources are the leading contributors in most watersheds. Given our common overarching goals, the DOJ and the EPA should help NACWA champion net environmental benefit as the key metric of success.

4. Address Affordability Challenges

Wet weather compliance is only one of many costly requirements utilities are facing. Local governments must not only fund ongoing operation and maintenance but also keep pace with aging infrastructure, growing populations, and emerging water-quality issues. The Federal Government has substantially reduced its funding role, leaving the burden almost exclusively on local governments. Long-term debt at the local level is estimated to be over \$1 trillion, and local governments have

.....
“...we are all in this together,
and the focus on monetary
penalties as a benchmark of
success undermines this
fundamental reality...”
.....

substantial debt-service obligations, leaving many utilities with limited or no capacity to take on additional debt. As rates continue to increase to pay for CWA mandates, more customers may be unable to pay, creating significant barriers to additional investments.

A recent report entitled *A Burgeoning Crisis? A Nationwide Assessment of the Geography of Water Affordability in the United States*, published by Michigan State University, indicates that 11.9% of households in the United States are currently unable to afford their water services, and that this figure could nearly triple in the next five years. The EPA and the DOJ must acknowledge these increasing and worsening affordability challenges and work more proactively with communities to find affordable solutions.

5. Continue Support for Integrated Planning and Community Prioritization of Clean Water Investments

The EPA's embrace and support of "integrated planning" concepts is one of the most important clean water regulatory developments of the past decade. Integrated planning—which NACWA and its members continue to work extensively with the EPA to implement—provides clean water utilities with more flexibility and control over how they meet their regulatory compliance obligations, allowing them to prioritize their investments. The DOJ should promote the inclusion of integrated planning in new decrees and should welcome modifications to existing decrees to incorporate this common-sense approach.

6. Improve Consistency

The EPA and the DOJ should ensure consistent negotiation and renegotiation of wet weather enforcement initiatives among its regional

offices. While compliance solutions should vary depending on the unique circumstances of each community, the terms of an agreement should not depend on the personalities of the DOJ and EPA representatives assigned to the matter, the EPA enforcement quotas, regional politics, or the entity's ability to afford representation by attorneys who are skilled in these types of agreements. The goal of any negotiation or renegotiation should be to achieve the best environmental and public health return for each ratepayer dollar invested.

7. Modify Existing Decrees

Approximately one hundred of NACWA's three hundred public utility members are under some form of consent decree related to sewer overflows. The decrees are relatively static vehicles to address a dynamic problem, including factors such as

- **aging infrastructure**
- **changing wet weather patterns**
- **evolving technology**
- **diminishing funding sources & options**
- **community affordability challenges**
- **population growth or decline and,**
- **shifting regulatory drivers & priorities.**

An adaptive management approach is critical to managing these challenges, as they evolve over time, sensibly and efficiently. Many of our members are also encountering regulatory barriers as they work to embrace innovative approaches and technologies related to energy production, water reuse, green infrastructure, and nontraditional partnerships. To encourage utilities to make the kind of progress that justifies the large expenditures mandated, the EPA and the DOJ should not only be open to modification but should also clearly communicate a policy that encourages modification of decrees when the utility can



demonstrate that the proposed modification will result in an increased net environmental benefit.

Transcend and Transition

The public clean water utility sector is one of the most significant contributors to CWA success in this country. Working closely with state and federal regulators, these public utilities have collectively achieved an astonishing level of pollution reduction, both at their own facilities and at the thousands of industrial facilities regulated by utilities under the federal pretreatment program. Some argue that absent aggressive enforcement, this progress would not have been achieved.

The drivers for past water-quality improvement and point-source pollution control can be debated. But today, NACWA public utility members understand the critical role they play in protecting our nation's waters. They earnestly and passionately serve their communities by fulfilling their mission. They are partners—and, in many instances, coregulators—in continuing CWA success, with a fiduciary responsibility to operate in a responsible and sustainable manner.

Ultimately, the solutions and flexibility NACWA seeks are nonpartisan. We believe it is in the

public's best interest to ensure that these approaches are adopted and implemented in a way that will transcend politics and endure administration changes. The challenges that face our nation's public clean water agencies are significant, but the opportunities to address these challenges and to improve water quality by working together with regulators have never been greater. By advancing the net-environmental-benefit approach to wet weather and by embracing compliance assistance, flexibility, and innovation, EPA can be a partner and catalyst for the next generation of water-quality success. 💧

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Hilary Meltzer is Co-Chair of NACWA's Legal Affairs Committee and Deputy Chief of the Environmental Law Division of the NYC Law Department. She works on many wet weather issues, including the Citywide MS4 permit of 2015, which involves working with more than a dozen City agencies to develop a workable approach to compliance. Hilary received a JD from Yale Law School and a BA with distinction in mathematics from Swarthmore College.

Amanda Waters is General Counsel for NACWA, and served previously as General Counsel & Director of Public Advocacy & Outreach for the Water Environment Federation, as well as Deputy Executive Director & General Counsel for Sanitation District No. 1 of Northern Kentucky. She received a JD from Pace University and a BS in biology from Eastern Kentucky University.

MEANINGFUL REGULATORY
IMPROVEMENT IS A

Marathon, Not a Sprint

by Rich Unverferth
& Chris Hornback



Just days after the inauguration, President Trump gathered business owners in the Oval Office to witness what he called “the biggest such act that our country has ever seen,” his signing of Executive Order 13771, *Reducing Regulation and Controlling Regulatory Costs*. Making good on campaign promises to cut federal regulations, Trump stressed that “we have to knock out two regulations for every new regulation.” But as Trump noted during the signing ceremony, his action goes far beyond the simple “two for one” sound bite and will require federal regulators to look for cost offsets for any new significant rules.

Every administration dating back to the Reagan years has committed to addressing, in some way, the growing burden of federal regulations and particularly environmental regulations. Each of those attempts at regulatory reform has met with varying levels of success, and we find ourselves again hearing from President Trump and his administration that more work is needed to reduce regulatory burden. But will this time around be any different? President Trump’s two-for-one approach and requirement of no net increase in the cost burden of significant federal rules is definitely a new spin on things that is already having a major impact. But the jury is still out as to whether this approach will lead to meaningful reform.

Beyond the two-for-one restriction, President Trump also initiated a regulatory reform initiative instructing agencies to form task forces and appoint regulatory reform officers to identify regulations ripe for repeal or revision. The US Environmental Protection Agency (EPA) took decisive action on

“...the types of issues facing NACWA members cannot be fixed without a long-term commitment.”

this directive faster than any other agency. Before having any of its key Senate-confirmed leaders in place—other than Administrator Scott Pruitt—the EPA initiated and closed a major information collection process to gather input from the public. It remains to be seen whether this somewhat rushed public process to quickly “reform” federal environmental regulations will succeed, but the nature of the administration’s request—seeking specific rules and regulations that could be repealed or modified to reduce burden—makes it difficult to provide meaningful input.

For example, many issues central to advocacy efforts by the National Association of Clean Water Agencies (NACWA) do not lend themselves to this type of surgical fix. Instead, the issues impacting NACWA members are often more complex, spanning multiple regulations and in some cases requiring statutory fixes. While a sprint for a quick win on the regulatory reform front may have been attractive to the new administration, the types of issues facing NACWA members cannot be fixed without a long-term commitment.

Recognizing that regulatory reform would be a focus for the Trump administration, NACWA initiated a months-long process with its members to gather input, long before the EPA even launched



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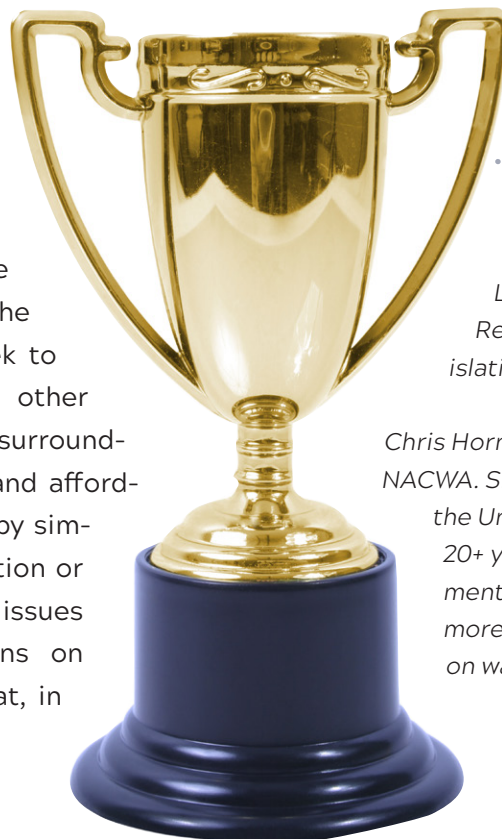
its official effort. NACWA developed a list of issues and positions on some areas of current Clean Water Act implementation, and on related laws and rules needing improvement, to submit to the agency. While NACWA participated in the EPA’s official process, it did so as a component of longer-term conversations its advocacy representatives have been engaged in with lawmakers from both sides of the aisle and with EPA officials for decades. In fact, most of what NACWA submitted to the EPA by the administration’s May 15, 2017, deadline were long-standing concerns and issues that the association has been working on for more than a decade.

The Trump administration may have a more sympathetic ear to some of NACWA’s positions, but Association stakeholders must also stay focused on the long-term and the fact that the next administration may seek to swing the pendulum in the other direction. Complex issues surrounding wet weather, nutrients, and affordability cannot be addressed by simply repealing a single regulation or modifying another. These issues require ongoing negotiations on multiple fronts to ensure that, in

the long-term, the necessary statutory and regulatory changes are made. To achieve this, NACWA must avoid the temptation to be opportunistic with the current administration and instead work toward meaningful change that will endure through future administrations.

The input process that concluded on May 15, 2017, is just the start of the conversation with the Trump administration. It will take time to bring administration officials up to speed on the years of dialogue that have already taken place before NACWA interests can have serious conversations about making improvements. But rest assured, NACWA will be very active and will be looking for every opportunity to advance meaningful regulatory improvements that will benefit both the municipal clean water community and the environment.

Though President Trump was quick to act and set the wheels in motion on regulatory reform, we all know that clean water advocacy is a marathon, not a sprint, and we must be prepared to stick with these issues for the long term. 💧



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Rich Unverferth is the Director of Engineering for the Metropolitan St. Louis Sewer District and serves as the Regulatory Vice Chair for NACWA’s Legislative and Regulatory Policy Committee.

Chris Hornback is the Chief Technical Officer at NACWA. Since graduating with distinction from the University of Virginia, he’s spent the last 20+ years working on a range of environmental issues and hopes to one day spend more time on or in the water, than working on water-related policy issues.

NACWA'S LEGAL ADVOCACY PROGRAM

The field of Clean Water Law is expanding rapidly. The issues are growing in complexity and the stakes have never been higher. Thankfully, you have help. NACWA's Legal Advocacy Program is the only program of its kind in the country focused specifically on national legal advocacy on behalf of the public clean water sector. It is a key component of NACWA's mission to safeguard the interests and rights of NACWA Member Agencies.

BENEFITS

WE LIVE CLEAN WATER LAW

LITIGATION

NACWA tracks litigation and legal developments across the country that have the potential to impact the clean water sector. We work to establish positive precedents that will benefit utilities nationwide and regularly intervene or serve as *amicus curiae* on issues of importance to our members. The Association engages in litigation to ensure appropriate, reasonable, cost-effective and consistent regulations, and to protect clean water utilities from unreasonable enforcement actions and third-party litigation.

RESOURCES & TOOLS

NACWA provides high-value legal tools for our members and the municipal clean water utility community at large including the *Consent Decree Handbook*, *Consent Decree E-Library*, *Stormwater White Paper*, and the upcoming *Stormwater MS4 Permit Guide* and *Key Clean Water Cases Compendium*.

COMMUNICATIONS & PROGRAMMING

NACWA keeps member utilities up to speed on critical legal issues affecting the sector through the *National Clean Water Law Seminar*, the *National Water Enforcement Workshop*, quarterly webinars and regular articles, newsletters and alerts.

COLLABORATION & NETWORKING

NACWA is peerless in offering member engagement and networking opportunities, such as, Legal Affairs Committee Meetings and Networking at Law Seminar & Water Enforcement Workshop.

MEMBERSHIP

NACWA engages top clean water firms and attorneys to help deliver these exceptional legal benefits to our public agency members. Become part of NACWA's defining nationwide network of legal experts by becoming a legal affiliate! For more information on membership, contact Kelly Brocato at kbrocato@nacwa.org.

For more information on the NACWA's Legal Advocacy Program, contact Amanda Waters at awaters@nacwa.org.

NACWA

www.NAWCWA.org/Advocacy



Founded in 1970, the National Association of Clean Water Agencies (NACWA) is the nation's recognized leader in legislative, regulatory and legal advocacy on the full spectrum of clean water issues. NACWA represents public wastewater and stormwater agencies of all sizes nationwide, and is a top technical resource in water quality, water management and sustainable ecosystem protection. NACWA's unique and growing network strengthens the advocacy voice for all member utilities, and ensures they have the tools necessary to provide affordable and sustainable clean water for all communities. Our vision is to represent every utility as a NACWA member, helping to build a strong and sustainable clean water future.

NACWA Stands for Unity

For clean water organizations, the landscape is evolving rapidly in multiple areas: legislative, regulatory and legal; scientific and engineering expertise; finances, affordability and planning; and communications and public relations. Utilities of the future cannot (and should not) navigate these changes alone. Across the country, the water sector is trending toward peer-to-peer collaboration to solve big problems. It's trending toward Unity. Will you?

For five decades, the National Association of Clean Water Agencies (NACWA) has been the nation's recognized leader in clean water issue advocacy, but that is only possible through the unity of member agencies nationwide.

- Unity in Peer-to-Peer Support
- Unity in Resource-sharing
- Unity of Expertise and Knowledge Base

We keep you unified, collaborating and growing with the nationwide clean water sector. It's time to find and associate with your peers.

**Give us a look.
Membership means Unity.**

For more information about membership, contact Kelly Brocato at kbrocato@nacwa.org.

WWW.NACWA.ORG/MEMBERSHIP

