

## **Federal Update & National Stormwater Trends**

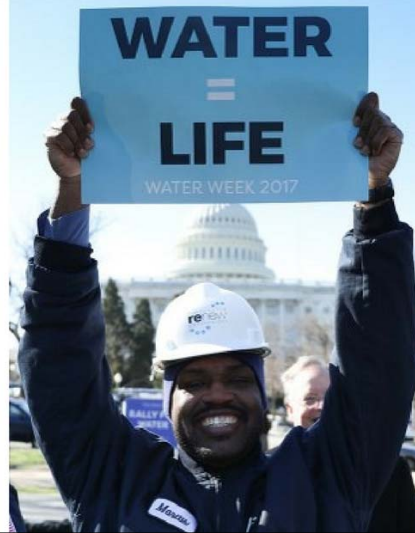
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Louisville, KY  
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## Who Are We?

NACWA works in Washington DC to create a regulatory, legislative, and legal environment that allows clean water agencies and stormwater agencies to innovate and thrive.



NACWA is a National Trade Association located in Washington, D.C. We represent nearly 300 publicly owned treatment works (POTWs) and municipal separate storm sewer systems (MS4s).

Our core purpose is to be the leading advocate for responsible national policies that advance a sustainable approach to clean water.

Our core aspirations are to:

- Act as a catalyst for change
- Every utility a member
- Advance advocacy through communication



### **Legislative Update – What’s Going on at the Hill?**

Everywhere I or my colleagues go, people are always asking what’s going on in DC. Even though we see chaos in 120 characters or less pretty much every morning, there is quite a lot going on in DC.

We luckily got through budget negotiations and the federal government has averted a shutdown... at least for now. With these budget negotiations, tax reform, infrastructure reform, regulatory reform, having a strong voice in Washington has never been more important.



### **EPA AND STAFFING**

Scott Pruitt confirmed Feb 17 as 14<sup>th</sup> U.S. EPA Administrator

Key elements of Administrator Pruitt's vision for EPA: BACK TO BASICS, make regulations regular. He has a specific vision for clean water, clean air and cleaning up waste sites (Superfund). He believes process matters; regulators exist to give certainty, which means avoiding regulations through guidance, litigation or consent decree; rule of law.

EPA actions must be tethered to its enabling statutes. There is also a lot of talk about cooperative federalism and how the EPA is looking to the states.

Pruitt is working on filling senior, non-Senate confirmed positions within the EPA. He has identified a key water staff person – Sarah Greenwalt, who is also from Oklahoma and worked alongside Pruitt in the Oklahoma Attorney Generals office.

Right now, career staff at EPA are running the show. This is Mike Shapiro for the Office of Water. The political vacancies will continue to hamper EPA's operations. They have little bandwidth to do much work beyond big ticket items like the Waters of the United States rule.

**David Ross** Wisconsin's assistant attorney general and director of the Environmental Protection Unit for Wisconsin's Department of Justice was nominated to head EPA Office of Water. He has a solid background in environmental law and water resources law. His nomination hearing was cancelled and will soon be rescheduled.

**Susan Bodine**, The Trump administration's nominee to head EPA's enforcement office, is poised to begin work at the agency as a special counsel ahead of her Senate confirmation.

Bodine will start work as special counsel to EPA Administrator Scott Pruitt on enforcement issues Sept. 5. Susan's prior

NACWA views her nomination to head OECA as a good thing for municipalities. She is very keen on integrated planning.

**Career staff changes.**

Deborah Nagel is now the Acting Director of the Office of Science and Technology. Interim Director after Besty Southerland stepped down, Jeff Lape, will be the Deputy Director at OST. Marcus Zobrist to serve as interim Acting Director of Water Permits Division.

**Deborah Nagle** as the Acting Director of the Office of Science and Technology. Deborah brings to the job 28 Years of experience in the Office of Water programs. With Deborah's selection, Jeff Lape will be resuming his responsibilities as the OST Deputy Director.



Trump Campaign promised **\$1 Trillion** package over 10 years... we will see how this plays out for water.

NACWA pushing hard for significant investment in water infrastructure. We expect it to be a part of the proposal. Earlier in the summer NACWA member Andy Kricun from Camden County in New Jersey testified before the Senate EPW Committee on the need for infrastructure investment. And, on September 26, David St. Pierre from Chicago Metropolitan Water District testified before the House Subcommittee on Water Resources and Environment

hearing on *Building a 21<sup>st</sup> Century Infrastructure for America: Water Infrastructure Stakeholder Perspectives*.

We continue to advocate for increased funding for SRFs and the WIFIA program. There is a growing interest within the water sector around various partnerships including “public-public” and “public-private” partnerships that can help advance clean water, especially for small utilities where there are opportunities for economics of scale.

Stay tuned on this...



Tax Reform is another big issue that the President wants to push through Congress. We recently got a glimpse of Trump’s Tax Reform ideas. He has said numerous times that the goal is to “eliminate tax breaks for the wealthiest investors.”

NACWA continues the fight for Tax-Exempt Municipal Bonds. With Tax reform moving toward center-stage, NACWA and other national organizations sent a follow-up letter to the House Ways & Means Committee to advocate for maintaining the tax exemption for municipal bonds.

Tax exempt bonds are a useful tool with \$38 billion in bonds being issued for water and wastewater projects nationally. These bonds have financed more than \$2 trillion in new infrastructure projects over the last 10 years.

For more information, check out the NACWA website. You can find 50 state fact sheets on tax-exempt municipal bonds for your state. This is helpful when talking to your congressmen and congresswomen.





Another item on top of our advocacy list is Integrated Planning and Affordability.

There is bipartisan support for this issue with companion bills in both chambers that deal with integrated planning. This bill is the Water Infrastructure Flexibility Act. (S.692/H.R.2355). The bills codify integrated planning framework, integrate green infrastructure into all Clean Water Act programs, establishes municipal ombudsmans within EPA Administrator's Office, and requires EPA to revise the 1977 CSO Financial Capability Guidance.

There is also H.R. 465 named the Water Quality Improvement Act introduced by Gibbs (R-OH) which seems to be the preferred bill. No bipartisan support.

There is some uncertainty on integrated planning.

With respect to affordability, there are efforts for short term legislative solutions that updates EPA affordability guidance. This codifies integrated planning into the Clean Water Act. There is also Long-term Legislative solution where NACWA is supports federal low income income ratepayer assistance program modeled after the low income home energy assistance program or LIHEAP.



In terms of Stormwater Legislation, this bill should not be unfamiliar. **The Innovative Stormwater Infrastructure Act of 2017** has surfaced before. The Bill was introduced into the Senate in August and has been referred to the Committee on Environment and Public Works.

**What does the Bill do?**

This Bill creates 3 to 5 “centers of excellence” or institutions of higher education that have demonstrated excellence in innovative stormwater control infrastructure. These “centers” will conduct research, develop manuals and guidance on BMPs, develop testing methods, provide technical assistance, and collaborate with other public organizations.

The other prong of this legislation is the project grants that will go to communities that are planning and implementing stormwater control projects. There is priority communities with CSOs and low-income or disadvantaged communities.

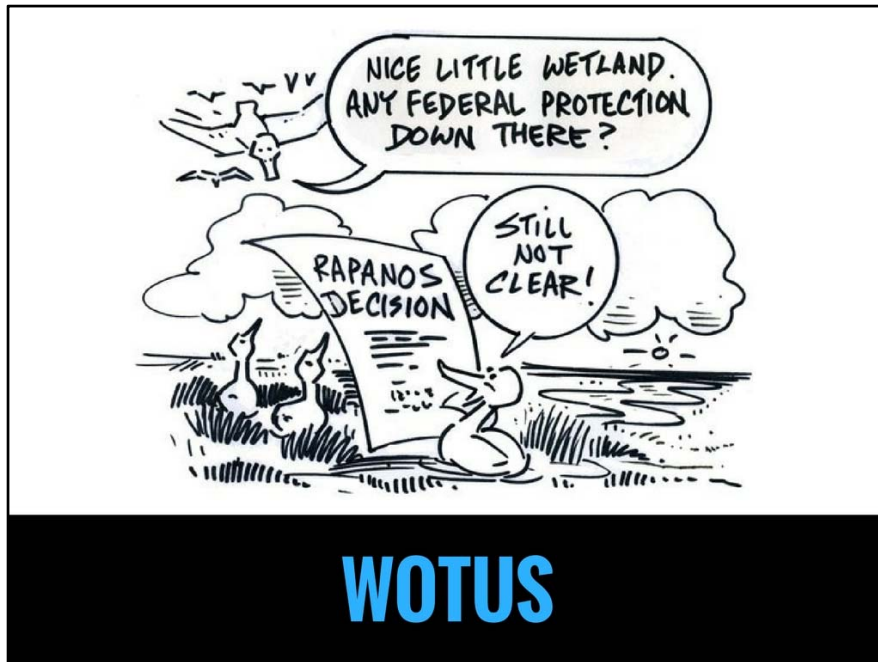
NACWA supports this Bill. We signed on to a support letter along with WEF and a variety of environmental NGOs. There is some bipartisan support for this bill and we hope that communication will help push this bill through.



Your voice matters!

The 2017 Rally for Water during Water Week in Washington, D.C.





February 28 Executive Order requires EPA to revoke 2015 WOTUS rule, DOJ to inform court of revocation/revision in any pending litigation, EPA to issue new WOTUS definition and to consider interpreting the new definition consistent with the Scalia plurality in *Rapanos*

Trump Administration rule to be based on plurality opinion, authored by Scalia. This is the “Continuous Surface Connection” idea. CWA jurisdiction over **non-navigable waters** only if the waters exhibit a **relatively permanent flow, such as a river, lake, or stream**. CWA jurisdiction over wetlands only if there is a **continuous surface connection between it and a relatively permanent waterbody**, and it is difficult to determine where the waterbody ends and the wetland begins.

The rule departs from the Obama Administration’s 2015 Clean Water Rule that was largely based on Justice Kennedy’s concurrence or the Significant Nexus test.

**The two-step process.**

1. Recodify the regulation that was in place prior to issuance of the Clean Water Rule – Rescission Rule signed on June 27, 2017
2. Propose a new definition consistent with Justice Scalia’s *Rapanos* plurality opinion – December 2017

We expect challenges to the rescission rule. There has not been any new science presented and right now the Administration is using case law to allow a new interpretation based on the same facts/science.

**U.S. Supreme Court** to review jurisdictional issue in CWR litigation – arguments in October.

**"Stormwater control features  
constructed to convey, treat, or store  
stormwater that are created in dry  
land."**

**- 2015 Clean Water Rule**

## **Stormwater Exemption**

NACWA continues to engage on existing protections especially with respect to stormwater control features.

**EPA WOTUS Teleconferences**  
**Stormwater, wastewater management, and  
drinking water agencies**  
**Tuesday, November 14, 2017**  
**1:00-3:00 PM EST**

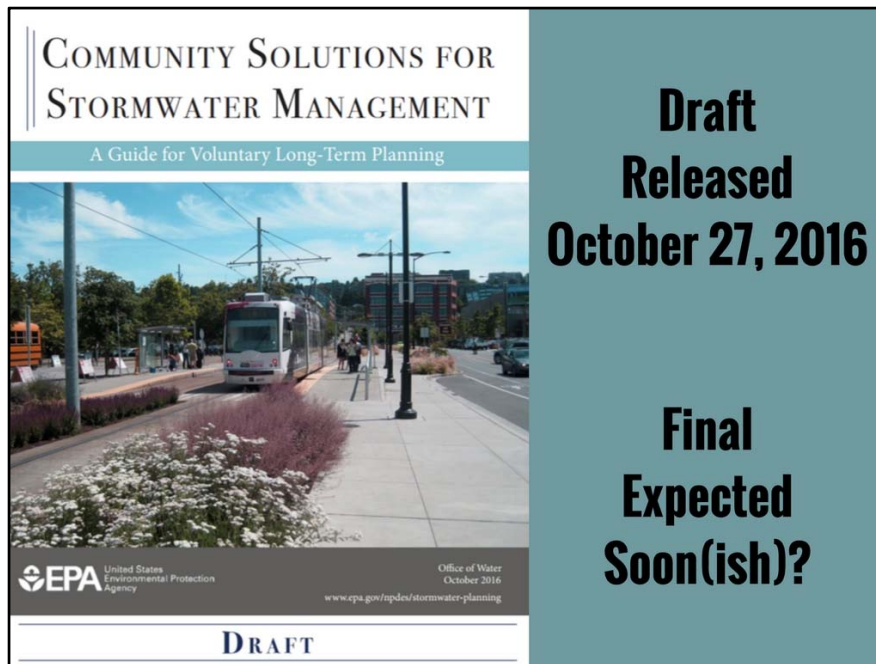
**Stormwater Exemption**

EPA is currently gathering input from stakeholders to inform development of its new WOTUS rulemaking, while also working to repeal the Obama Administration's Clean Water Rule.

EPA announced a series of teleconference meetings to gather input on WOTUS. NACWA plans to participate in these calls and provide written comments, but encourages its member agencies with specific or unique concerns related to WOTUS to also participate in the listening sessions and to prepare their own comments.

Nine of the scheduled teleconferences will be tailored to specific sectors, including the water sector. The call for stormwater, wastewater management and drinking water agencies is scheduled for Tuesday, November 14, from 1:00 pm - 3:00 pm ET.





EPA released a draft of their Long-Term Stormwater Planning Guide last October.

The Guide is to assist states and local governments in developing and implementing stormwater plans. EPA identified 5 communities (Burlington, Iowa; Chester, Pennsylvania; Hattiesburg, Mississippi; Rochester, New Hampshire; Santa Fe, New Mexico) develop long-term stormwater plans. These will serve as national models.

NACWA submitted comments on March 30, 2017 with the view that this was a practical first step to enhancing long term stormwater planning. We also pointed out that many municipalities are only now beginning to grasp the idea of integrated planning and green infrastructure. In addition, many municipalities lack the resources, information, and necessary expertise to collect municipal asset data let alone analyze data for long term stormwater planning initiatives. Municipal responsibilities are often pulled in multiple directions with other local responsibilities and may not have the tools to balance stormwater programs that are regulatory in nature and the local societal demands such as police, roads, and emergency services.

Fear that this voluntary Guide could be interpreted as an attempt to regulate. We also thought the community scale was unclear and the draft fell short of including a holistic

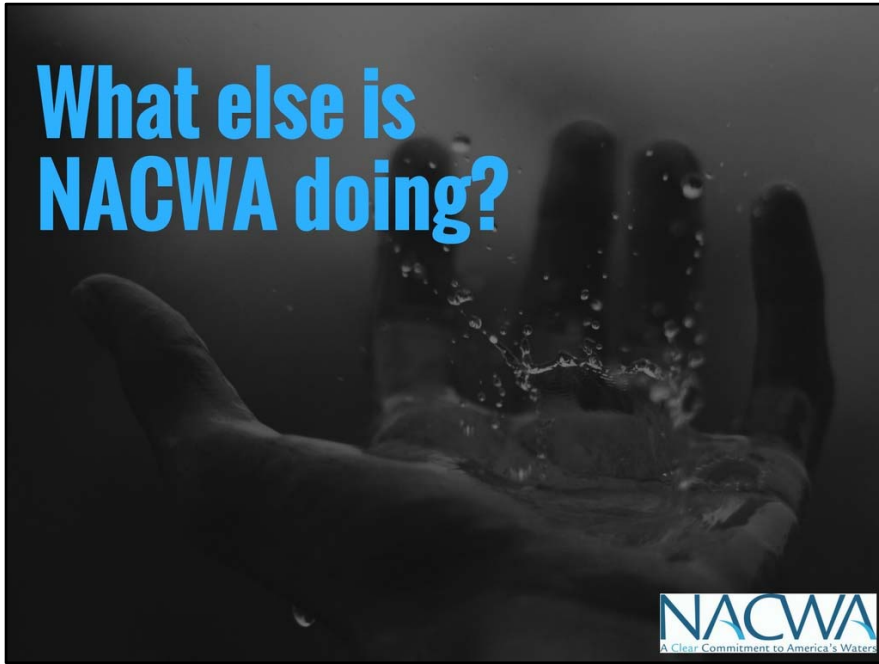
picture of other environmental statutes (e.g., Endangered Species Act, Federal Emergency Management Act)

## **More Regulatory Involvement**

**Human Health Recreational Ambient Water Quality  
Criteria/Swimming Advisories for Microcystins and  
Cylindrospermopsin  
Aquatic Life Criteria for Specific Conductivity  
Water Quality Criteria for Aluminum**

**Regulatory Update**

**What else is  
NACWA doing?**



## Implementation - Tracking Issues

Firm position that the rule remain procedural in nature

Protect the MEP standard

No substantive changes to MS4 program

Maintain maximum flexibility

## Phase II Remand Rule

Final Rule effective on January 8, 2017  
EPA Selected the “Permitting Authority  
Choice Approach”

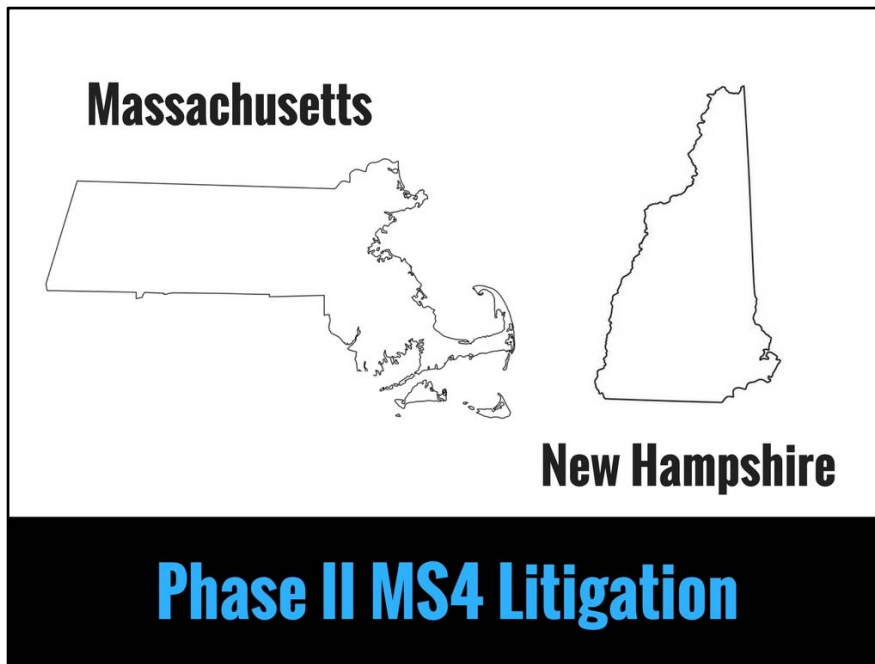
### Option 1: “Comprehensive General Permit”

- Contains more complete set of requirements
- Public comment on the GP
- Traditional Notice of Intent (NOI)

### Option 2: “Two-Step General Permit”

- Establishes baseline General Permit

- NOI includes details, establishes specific terms and conditions
- Public comment on NOIs



Mass and New Hampshire are among the states where EPA is the permitting authority.

Massachusetts Coalition for Water Resource Stewardship – represents municipalities/stormwater districts  
City of Lowell, Town of Franklin, National Association of Homebuilders and Massachusetts affiliate – filed in 1<sup>st</sup> Circuit  
Center for Regulatory Reasonableness filed appeal in D.C. Circuit

EPA is postponing for at least one year the effective date of its Clean Water Act (CWA) permit for small municipal stormwater systems in Massachusetts while it weighs settling court challenges to the Obama-era permit -- the Trump administration's first substantive response to suits over its novel mandates for stormwater treatment and on-site retention.

Acting EPA Region 1 Administrator Deborah Szaro issued a [memo dated June 29](#) that invokes the agency's power under section 705 of the Administrative Procedure Act (APA) to postpone the date when a new rule will take effect pending the outcome of litigation "if justice requires" -- a power that environmentalists are already seeking to limit in a suit over another Obama-era water rule.

“EPA finds that justice requires postponing the July 1, 2017 effective date of the Massachusetts permit for one year pending judicial review,” Szaro's memo says. Instead, she continues, the permit will take effect on July 1, 2018.

## EPA issued MS4 Permit in Massachusetts (effective date just extended to July 1, 2018 by new administration to allow for settlement discussions)

Various parties filed appeals (U.S. Court of Appeals - First Circuit; D.C. Circuit)  
Consolidated in D.C. Circuit

Very similar permit issued for New Hampshire – also has been challenged and consolidated with D.C. Circuit case; resolution for both will likely move forward together

Could be an indication of EPA's preferred permit terms

NACWA standing ready to file *amicus curiae* brief to protect MEP standard, but next steps on the cases not clear at this point



## Two Big Issues - MA/NH

1. Shift away from CWA mandate that MS4s reduce discharge of pollutants to the maximum extent practicable

2. Concerns with EPA requiring MS4s to impose numeric post-construction retention standards on new development/redevelopment

## Phase II MS4 Litigation

The permit also requires the regulated MS4s to, in turn, impose a numeric flow related (retention) standard on new development and redevelopment within their communities. Flow regulation may be required by state or local law, but it is not clearly within EPA's authority to regulate under the CWA. Indeed, this will be the first court of appeals case to decide whether EPA has authority to regulate flow. A federal district court previously held that EPA does not have the authority to regulate flow in the TMDL context in *Virginia DOT & Fairfax County v. EPA*. In that case, the court vacated EPA's Accotink Creek Flow TMDL, finding that flow is not a pollutant and therefore not within EPA's authority to regulate in a TMDL.

NACWA participated as an *amicus curiae* in the Accotink litigation to push back on EPA's attempt at flow based permitting.

## **NACWA Stormwater Permitting Guide**

**Provide assistance to stormwater utility managers on a variety of challenges during the permit development process, when implementing permit requirements, and when faced with regulatory inspections or enforcement proceedings.**

**Stormwater Advocacy**

In the wake of issuing the final Phase II Remand Rule in 2016, there has been a significant regulatory evolution within EPA's National Pollutant Discharge Elimination System (NPDES) permitting program for small municipal separate storm sewer systems (MS4s). Given the regulatory uncertainty in the realm of MS4 permitting, and NACWA's commitment to advancing robust stormwater programs, NACWA is proposing the development of a Stormwater Permitting Guide that will aid all municipal stormwater managers—particularly in small and medium sized communities—as they navigate the stormwater permitting process.

## **NACWA Stormwater Permitting Guide**

MS4 Permitting Overview

General Reqs

WQS & TMDL Provisions

Hot Topics

Permit Appeals

Enforcement

and more...

**Stormwater Advocacy**

# NACWA Stormwater Permitting Guide



National Clean Water Law Seminar:  
*A Seminar for Public Agency Attorneys & Managers*  
November 14 - 16, 2017

Hyatt Regency Savannah  
Savannah, GA

**Stormwater Advocacy**

# National Stormwater Advocacy Network

NACWA coalition of state and regional stormwater groups among others.

Foster collaborative relationships.

Exchange information.

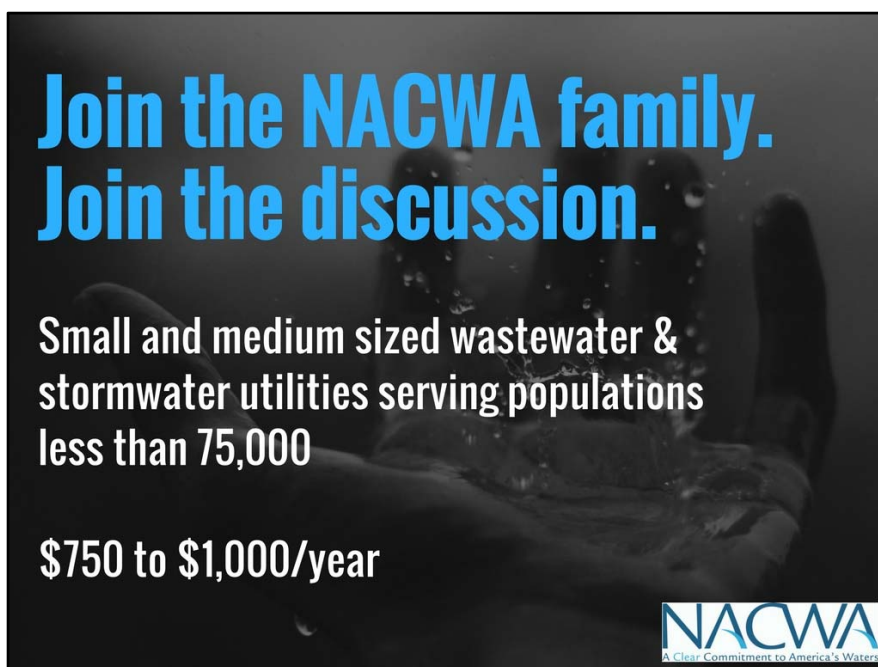
Receive timely updates on federal policy.

Network.



**Next Call: November 6th, 2017 @ 2:30 PM EST**

**NACWA**  
A Clear Commitment to America's Waters



**Join the NACWA family.  
Join the discussion.**

**Small and medium sized wastewater &  
stormwater utilities serving populations  
less than 75,000**

**\$750 to \$1,000/year**

**NACWA**  
A Clear Commitment to America's Waters

NACWA has restructured its membership dues to better assist small and medium utilities and MS4s.

Your organization can now experience the full membership advantage at a small fraction of the price. While the Small & Medium Utility Membership program lasts, **NACWA is offering a dues rate of between \$750 and \$1000 per year**—up to 80% off standard rates. It's a value we're pleased to offer exclusively to small and medium sized wastewater/stormwater utilities serving populations of 75,000 or less.

Please contact NACWA's membership director, Kelly Brocato for more details.

Kelly can be reached by email at [kbrocato@nacwa.org](mailto:kbrocato@nacwa.org) or by phone at 202.833.1449.



# THANK YOU SESWA!

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