

# Federal Update & National Stormwater Trends

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Southeast Stormwater Association  
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# WHO ARE WE?

- National trade association for public wastewater and stormwater utilities
- NACWA represents over 330 public utility members of all sizes nationwide
- Recognized leader in legislative, regulatory, and legal advocacy on full spectrum of clean water issues



# 2020 NATIONAL POLICY DEVELOPMENTS

A SERIOUSLY BUSY (AND DIFFERENT) YEAR FOR THE CLEAN WATER SECTOR

## LEGISLATIVE

APPROPRIATIONS

WRDA LEGISLATION

NDAA LEGISLATION/PFAS

SEWER OVERFLOW & STORMWATER

REUSE GRANTS PROGRAM



## REGULATORY

PFAS

WOTUS

NUTRIENTS

INDUSTRIAL STORMWATER MSGP

LEAD AND COPPER RULEMAKING

TRANSPARENCY IN SCIENCE

TSCA

## LEGAL

DIRECT HYDROLOGIC CONNECTION LITIGATION - COUNTY OF MAUI

MS4 PHASE II LITIGATION - MASSACHUSETTS/NEW HAMPSHIRE

GENERAL NUTRIENT VARIANCES - MONTANA

# 2020 NATIONAL POLICY DEVELOPMENTS

A SERIOUSLY BUSY (AND DIFFERENT) YEAR FOR THE CLEAN WATER SECTOR

## LEGISLATIVE

ECONOMIC STIMULUS  
PACKAGES  
FEDERAL RELIEF PACKAGE

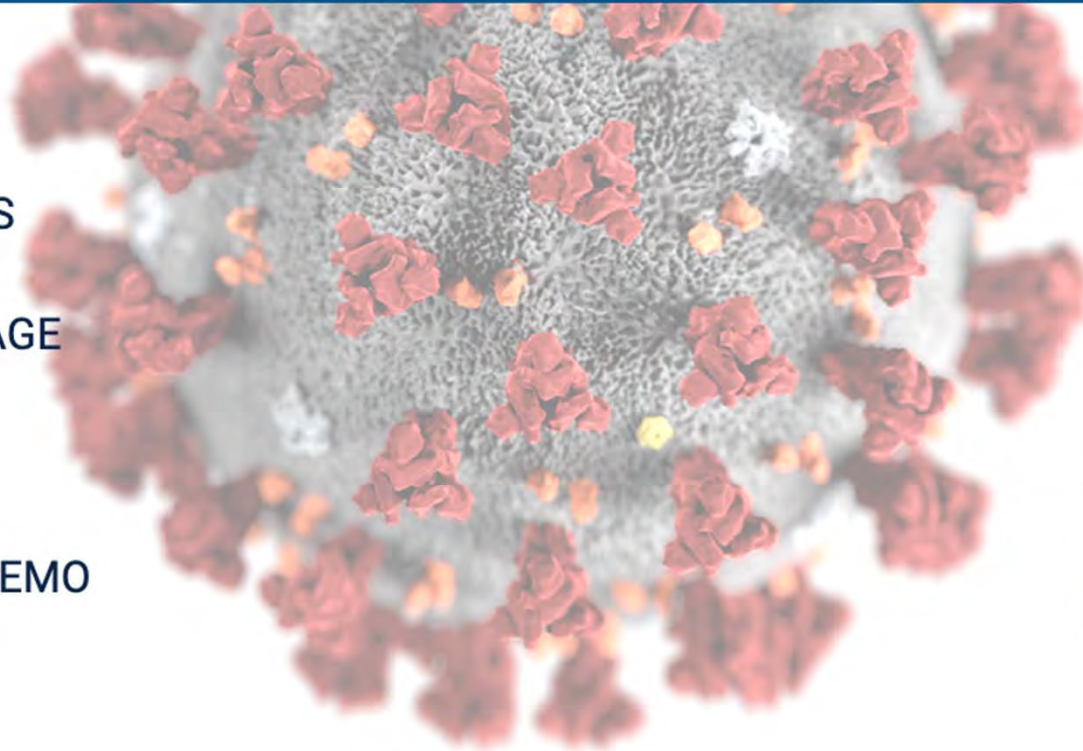
## LEGAL

EPA ENFORCEMENT MEMO

## REGULATORY POLICY

ESSENTIAL WORKER  
PROTECTIONS

WASTEWATER-BASED  
EPIDEMIOLOGY  
(WBE)/SURVEILLANCE



# 2020 ADVOCACY DURING COVID-19

## Congressional Advocacy Remains a Priority for NACWA

TEMPLATE LETTER FOR UTILITIES TO CONTACT THEIR MEMBERS OF CONGRESS

AUGUST 3, 2020 - LETTER TO CONGRESS ON PROVIDING FEDERAL FUNDING TO UTILITIES TO MAINTAIN ACCESS TO WATER (E.G., NO SHUT OFFS)

JULY 15, 2020 - NACWA ISSUES MEMORANDUM ON DIVERTING PUBLIC CLEAN WATER FUNDS FOR OTHER PROGRAMS

JUNE 2020 - NACWA PUBLISHES UTILITY CONSIDERATIONS DOCUMENT ON SURVEILLIONG WASTEWATER FOR COVID-19 RNA

APRIL 2020 - NACWA PUBLISHES COVID-19 FINANCIAL IMPACTS REPORT



# LEGISLATIVE UPDATE

## FEDERAL APPROPRIATIONS - FY2021

House passed **UNPRECEDENTED FUNDING** for water sector in July 2020 (H.R. 7608)

- \$9.38 billion in overall funding for the EPA (\$318 million over current levels)
- **\$8.5 billion for the Clean Water State Revolving Fund (CWSRF)**(nearly 5x that of current levels; **\$6.35 billion through EPA emergency infrastructure investment grants**)
- Funding for several key programs:
  - \$457 million in Sewer Overflow and Stormwater Control Grants (\$57 million in base funding; \$30 million more than current FY20 and additional \$400 million through EPA emergency infrastructure investment grants)
  - \$3 million for the Water Infrastructure Workforce Development Grants (\$2 million more than current)
- **No direct FY21 appropriations for Water Infrastructure Finance and Innovation Act (WIFIA)**

# LEGISLATIVE UPDATE



## **FEDERAL APPROPRIATIONS - FY2021**

**Senate releasing appropriation package in September  
2020**

# **LEGISLATIVE UPDATE**



# WATER RESOURCES DEVELOPMENT ACT (WRDA)

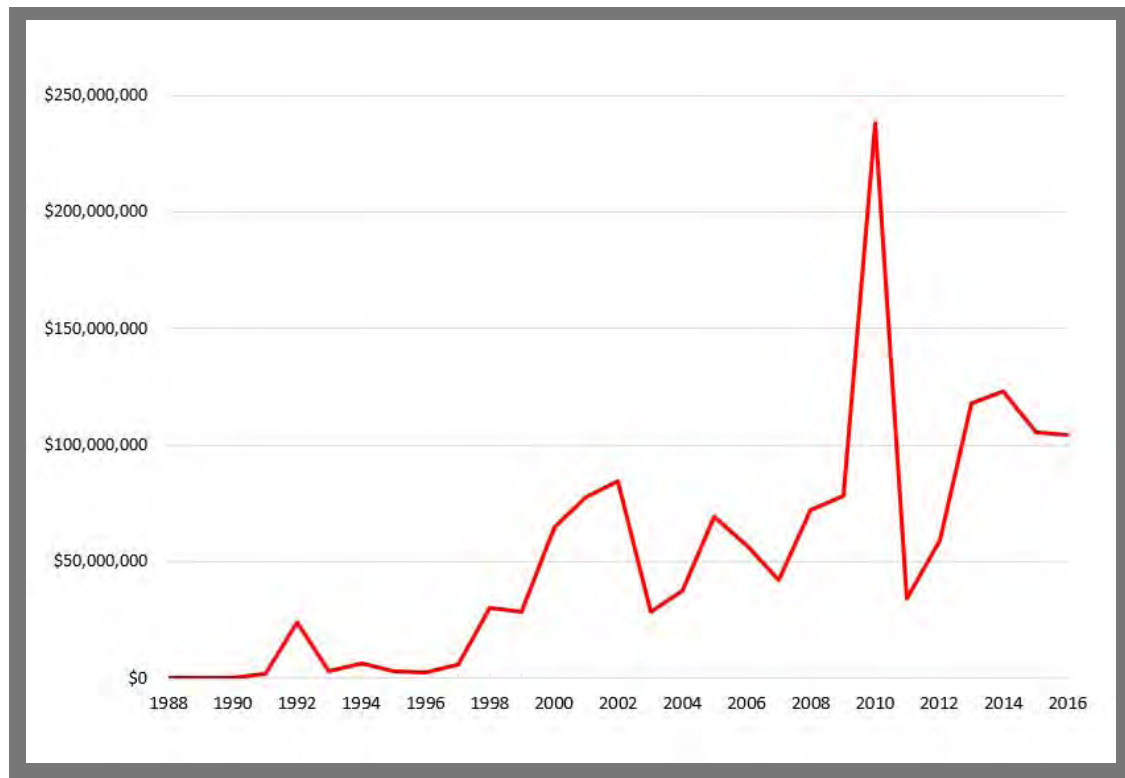
## WRDA negotiations in the works - final bill expected this fall

- Preliminary process in Senate started end of 2019
- House began their discussions early 2020
- WRDA will likely carry the CWSRF
- Key issues carrying over from WRDA 2018:
  - EPA EFAB Stormwater Task Force/Workgroup
  - EPA Water Workforce Grant Program
  - Sewer Overflow and Stormwater Reuse Grant Program
- Key issues to look out for in WRDA 2020:
  - Financial strains on water sector due to COVID-19, PFAS issues??

# LEGISLATIVE UPDATE

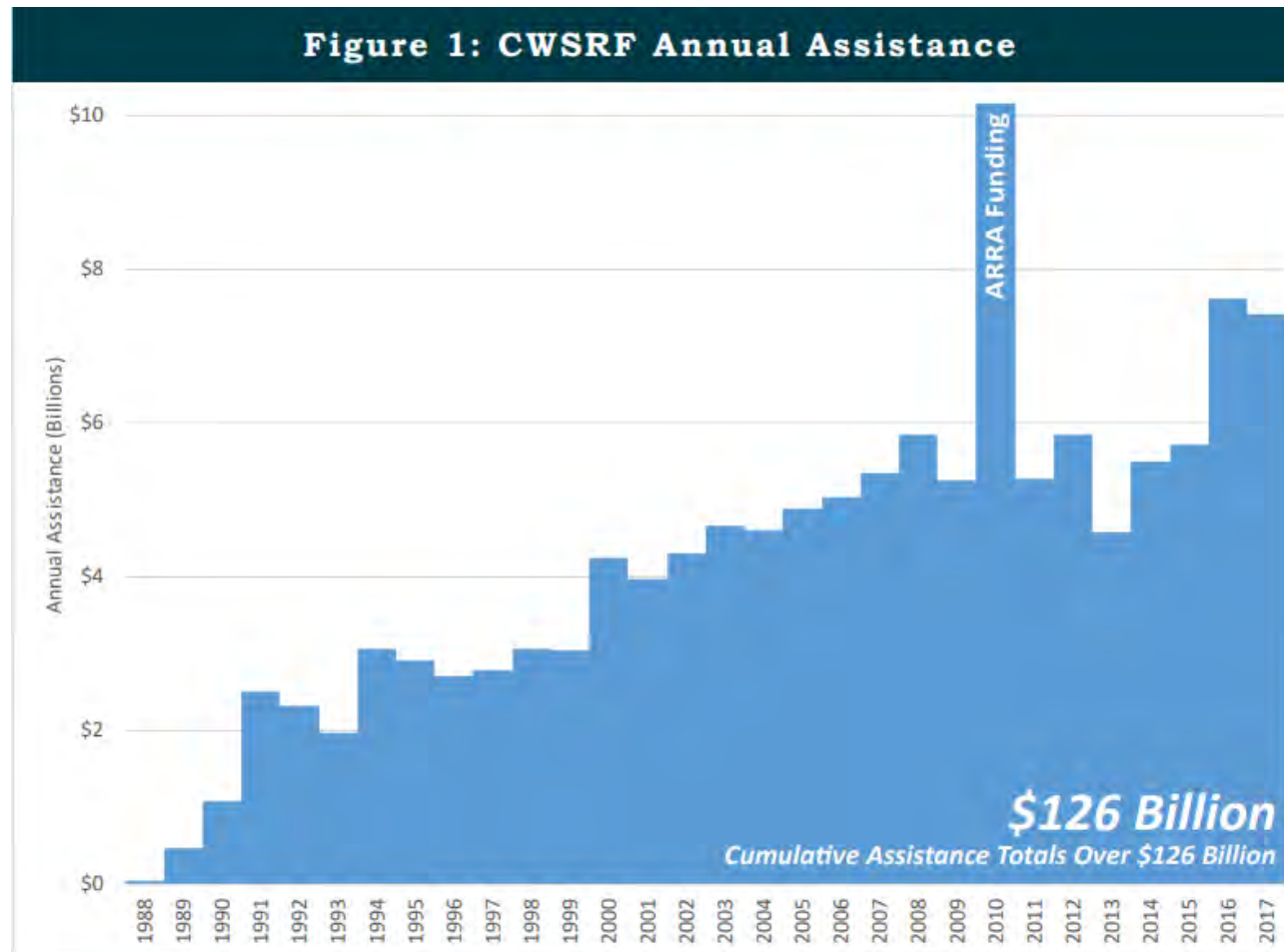
# TOTAL NATIONAL CWSRF FOR STORMWATER - 1988 TO 2016

Average 1.10% CWSRF goes to Stormwater Management



DATA FROM EPA, SEPTEMBER 2018

# CWSRF ANNUAL ASSISTANCE 1988 - 2017



## EPA EFAB STORMWATER FINANCE WORKGROUP

- Established from 2018 WRDA Legislation
- EFAB operates within EPA's Water Infrastructure and Resiliency Finance Center
- Provides ideas and advice to EPA Administrator and program offices
  - 20 stormwater experts on workgroup
- EPA soliciting input on:
  - Funding sources and challenges
  - Affordability
  - Long-term O&M and capital expenditures
- Held several stakeholder workshops throughout the country

# LEGISLATIVE UPDATE

## EPA EFAB STORMWATER FINANCE WORKGROUP

### EFAB Report to Congress: "Evaluating Stormwater Infrastructure Funding and Financing" - March 2020

- Recommendations:
  - Increase federal investment
  - Provide a new construction grant program
  - Provide additional funds for SRF and WIFIA without offsets to other programs
  - Create funding program addressing household affordability, similar to Low Income Home Energy Assistance Program (LIHEAP)
  - Prioritize education of elected officials on value of stormwater utilities

# LEGISLATIVE UPDATE

HEADQUARTERS  
Environmental  
Protection  
Agency

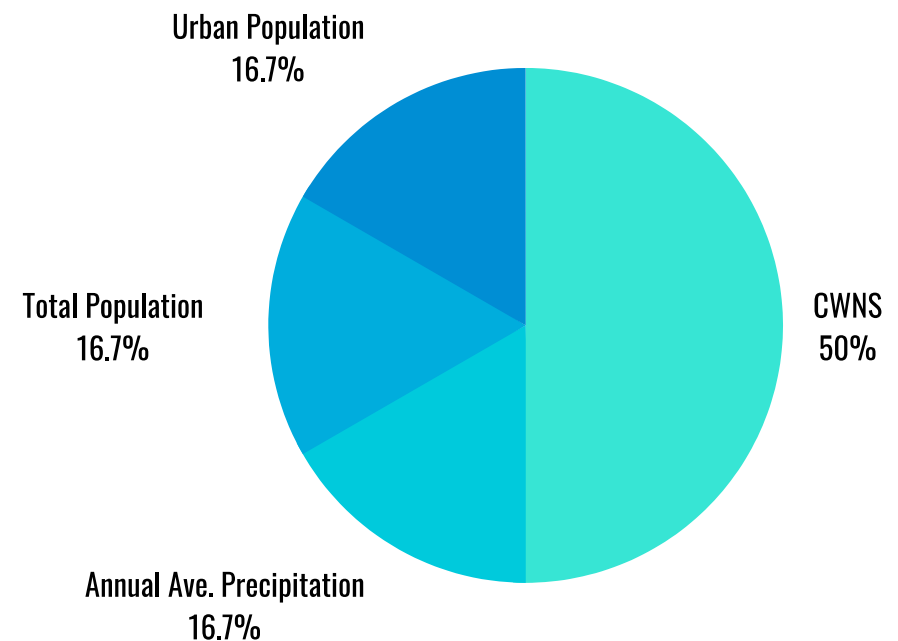


# REGULATORY UPDATE

# SEWER OVERFLOW AND STORMWATER REUSE GRANT PROGRAM

## EPA Proposes New Formula for Allocating Funding to States

- Originally authorized over 20 years ago - never appropriated/funded (part of the CSO Control Policy)
- First round of funding (\$28 million) to be issued this fiscal year; more hopefully in future appropriations
- **New formula to distribute funding - weighted approach**
- Uses most recent Clean Watershed Needs Survey
  - 2012 is the latest
- Comment period closed Sept. 3, 2020
- NACWA supportive but concerned with outdated CWNS and delays in reporting



# REGULATORY UPDATE

## PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS)

### A CONTINUED CHALLENGE FOR THE CLEAN WATER SECTOR...

- Cuts across all environmental statutes
- Legacy contaminant; found at part per trillion levels
- More than 5,000 chemical varieties within the PFAS family
- Found in all sorts of common consumer products
- Water utilities are "passive receivers" and do not profit from the manufacture or use
- Ongoing battle to hold producers/manufacturers responsible for the costs of treatment, removal
- Congress involved; EPA and other federal agencies assessing options and regulatory path forward



# REGULATORY UPDATE



# OTHER REGULATORY DEVELOPMENTS

## Amid Pandemic, EPA Remains Very Active on the Regulatory Front

POTW NUTRIENT SURVEY - EPA CONTINUES TO GATHER INTEL (8% OF POTWS REPORTING)

EPA OIG - DIGGING INTO HARMFUL ALGAL BLOOMS (HABS)

BLENDING RULE - THIS YEAR (MAYBE, BUT NOT LIKELY)

PFAS HAZARDOUS SUBSTANCE DESIGNATION - POSSIBLE THIS FALL

LEAD AND COPPER RULE LONG-TERM REVISIONS - EXPECTED THIS YEAR

PFAS SW846 ANALYTICAL METHODS - EXPECTED THIS FALL

CSO POST CONTROL PLAN COMPLIANCE - ONGOING

AFFORDABILITY - ONGOING

WATER REUSE ACTION PLAN - ONGOING

WATERS OF THE UNITED STATES (WOTUS) - FINALIZED AND EFFECTIVE JUNE 22, 2020

INDUSTRIAL STORMWATER MSGP - COMMENT PERIOD CLOSED JUNE 1, 2020

PFAS REGULATORY DETERMINATION - COMMENT PERIOD CLOSED JUNE 10, 2020

ALWQC - ALUMINUM - CLOSED SEPTEMBER 2018; TECHNICAL GUIDANCE TO BE REISSUED 2020

# LEGAL UPDATE



# LEGAL UPDATE

## HAWAII WILDLIFE FUND V. COUNTY OF MAUI

### Whether a discharge to groundwater can trigger Clean Water Act liability?

- Direct Hydrologic Connection Theory
- U.S. Supreme Court oral arguments - November 6, 2019; Decision April 23, 2020

#### **Background and case history:**

9th Circuit Decision upheld District Court decision and created the "indirect discharge theory" where the County of Maui is liable because:

- 1) a point source discharge
- 2) "fairly traceable" connection from the point source to a navigable water such that the discharge is the functional equivalent of a discharge into navigable water, and
- 3) there is "more than a de minimus amount" of pollution reaching navigable waters

# LEGAL UPDATE

## HAWAII WILDLIFE FUND V. COUNTY OF MAUI

### Whether a discharge to groundwater can trigger Clean Water Act liability?

#### SCOTUS Decision:

- Rejects 9th Circuit's "Fairly Traceable" standard, opining that it is "too extreme" for all discharges that reach a navigable water that are "fairly traceable" back to a point source fall under NPDES permitting coverage
- Dismissed Solicitor General, representing the federal government, that travel through any amount of groundwater negates NPDES coverage of a discharge - theory would "risk serious interference with EPA's ability to regulate ordinary point source discharges"
- Created a new test: a NPDES permit is required "when there is a direct discharge from a point source into navigable waters or when there is the **functional equivalent** of a direct discharge."
- Held that "whether pollutants that arrive at navigable waters after traveling through groundwater are 'from' a point source **depends upon how similar to (or different from)** the particular discharge is to a direct discharge."

# LEGAL UPDATE

## HAWAII WILDLIFE FUND V. COUNTY OF MAUI

### What's Next?

- Per the Court, EPA to provide "administrative guidance (within statutory boundaries) through, for example, grants of individual permits, promulgation of general permits, or the development of general rules."
- Exact implications of the decision are uncertain and will need to be addressed by future litigation or rulemaking by EPA; EPA has made no decision on how it will proceed
- Will likely lead to expansion of discharges subject to regulation under NPDES program - concerns remain for UIC wells (even if permitted under federal Safe Drinking Water Act), pipes, surface impoundments, **green infrastructure**, underground injection of effluent for groundwater recharge and/or water reuse.

# LEGAL UPDATE

## MA/NH MS4 PHASE II LITIGATION

Does EPA have the ability to impose MS4 permit requirements (e.g., water quality standards) that go beyond the maximum extent practicable?

- Litigation & settlement negotiations since 2017
- Settlement reached in December 2019

### 1) General prohibition:

"Permittee shall reduce the discharge of pollutants such that the discharges from the MS4 do not cause and contribute to an exceedance of water quality standards."

- Problematic for permittees with TMDLS for phosphorus-impaired waters
- Very costly for municipalities; could set precedent for other states issuing permits

# LEGAL UPDATE

## MA/NH MS4 PHASE II LITIGATION

### Results of Negotiations?

EPA eliminated the problematic "cause and contribute to a water quality exceedance" language and proposed an alternative, more flexible compliance schedule in situations where it is **impractical** for permittees to comply with pollutant reductions.

Essentially, there is now an off-ramp. Permittees can request an alternative schedule request when:

- Unaffordable within the time frame
- Reductions are impracticable

Permittees must submit information to state (e.g. reasons why alternative schedule is needed, estimated costs, affordability for taxpayers/ratepayers, anticipated reductions, scale of structural BMPs, and more).

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## MS4 STORMWATER PERMITTING GUIDE

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presented by:

The National Association of Clean Water Agencies



To download the Guide, visit:  
[www.nacwa.org/stormwaterguide](http://www.nacwa.org/stormwaterguide)



# COMING THIS OCTOBER!

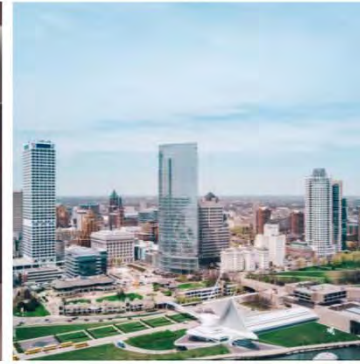
## NACWA Stormwater Permit - Screening Tool



- Will build upon our 2018 Stormwater Permitting Guide
- Help municipalities better understand and navigate permit language and regulatory obligations
- **Provide high-level individualized feedback** to interested utilities
- Will use a pre-determined checklist of priority issues:
  - Water quality standards - "cause and contribute" & exceedances
  - TMDLs - compliance & development of implementation plans
  - Impaired Waters
  - Numeric limits? Water Quality Trading?
  - Minimum Control Measures
  - MEP Standard and Practicality

# UPCOMING EVENTS:

- **National Clean Water Law & Enforcement Seminar**  
November 17 - November 19, 2020; Virtual
- **Water Week 2021 & National Water Policy Fly-In**  
April 25 - May 01, 2021; Washington, D.C.
- **National Pretreatment Workshop & Training**  
May 18 - May 21, 2021; Nashville, TN
- **Strategic Communications: H2O Workshop**  
June 14 - June 15, 2021; Milwaukee, WI
- **Utility Leadership Conference & Annual Meeting & 50th Anniversary Gala**  
July 11 - July 14, 2021; Seattle, WA



# **JOIN THE NACWA FAMILY, JOIN THE DISCUSSION.**

**Special rates for small and  
medium sized wastewater and  
stormwater utilities serving less  
than 75,000 people**

## **Not sure how to become a member?**

**<https://www.nacwa.org/about-us/join-nacwa/membership-application>**



**THANK YOU SESWA!  
(CAN'T WAIT TO SEE  
EVERYONE NEXT YEAR...**



**HOPEFULLY IN PERSON!)**

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