

2015 AWWA Legislative Fly-In & Spring WUC Meeting

Legislative Fly-In

The 2015 Fly-In was held in Washington DC on March 18 & 19, 2015. A total of 130 AWWA members representing 48 states and the District of Columbia attended the Fly-In to discuss matters of importance to the water industry. I appreciate the Section's continued support in providing funding for a 2-person staff to attend these important legislative and regulatory events.

This year, there were two 'Issues' and three 'just in case' topics;

Issues:

1. Remove the prohibition on combining tax exempt debt with loans under WIFIA

Summary: Congress enacted WIFIA in 2014 to provide low-cost, long-term federal loans for major improvements within the Water Sector, including the nation's drinking water and wastewater systems. WIFIA can finance up to 49 percent of eligible projects costing \$20 million or more via loans based on long-term U.S. Treasury rates.

WIFIA was enacted in June 2014 as a part of the Water Resources Reform and Development Act (WRRDA), but during consideration of the larger bill the Joint Committee on Taxation issued a budget score for WIFIA based on an assumption that the program would induce the issuance of additional tax-exempt debt. To negate this score, lawmakers added a prohibition on combining tax-exempt bonds with WIFIA loans to allow the program to move forward with the rest of WRRDA. There is no infrastructure policy supporting this prohibition, and its unfortunate side effect is that it will require project sponsors to use cash, taxable municipal debt, or private sources in order to pay for the remaining 51 percent of project costs not covered by WIFIA. In a large majority of cases these funding sources would drive up project costs and wipe out any savings from using WIFIA.

2. Support Water Infrastructure Finance Tools - WIFIA, SRFs, Tax-exempt Municipal Bonds

Summary: While communities are best served by water utilities that are self-sustaining through local rates and charges, there are times when an investment in infrastructure is required that is too large to be accommodated affordably in a short time frame using only local rates and charges.

SRF: The SRF programs have provided much-needed support for both drinking water and wastewater utilities, thus assisting in the fundamental protection of public health and the environment, particularly for small to medium-sized communities. The Clean Water State Revolving Fund (CWSRF) and the Drinking Water State Revolving Fund (DWSRF) have in fact been the primary tools for federal investment in water infrastructure. It is vitally important that these successful programs be maintained and strengthened.

WIFIA: appropriate the \$20 million authorized in fiscal 2015 and the \$25 million authorized for 2016 – for a total of \$45 million in FY 2016 – so that WIFIA can begin assisting communities in addressing their water infrastructure needs as soon as possible. Because WIFIA is strictly a loan program at Treasury rates, it results in no long-term net cost to the Treasury or US taxpayers.

Tax-exempt municipal bonds: Protect the current exemption of municipal bond interest from federal taxation. They are used by over 70% of U.S. utilities and usually provide the core funding for larger water infrastructure projects. Because the interest on these bonds is exempt from federal taxation, the bonds carry lower interest rates than taxable bonds – thus lowering the cost of the project and lowering utility bills in that community. Moreover, municipal bonds provide relatively quick access to capital and are generally unencumbered by red tape. Subjecting interest earned on municipal bonds to federal income taxation will devastate municipal water project finance.

In addition to the two Issues, there were also three ‘just-in-case’ position papers;

1. Algal Blooms. Currently, House Bill 212 has been passed and its equivalent is in the process of being heard in the Senate. While the AWWA supports the intentions of this legislation, the focus would be better directed on the prevention of algal blooms as opposed to current legislative efforts which promote an ‘after-the-fact’ type of response. AWWA is recommending that the EPA look toward methods of increasing the effectiveness of non-point source pollution programs including the potential of making these pollution sources subject to the CWA. AWWA anticipates this will be a tough road considering the strength of Agriculture. The AWWA is also reinforcing its position that any potential limit on concentration of any constituent must not be set via legislation but through the established scientific evaluation process that includes the CCL and UCMR.
2. Cybersecurity. The water industry is seeking assistance from the federal level in terms of advanced notice of potential threats, proven and effective measures of protecting water systems from those threats, remediation methods following attacks and the expansion of liability protections for water systems that voluntarily share or receive indicators and cybersecurity countermeasures. The Sector has specifically indicated we are interested in a water sector-specific approach that we can implement ourselves rather than any regulatory directives.
3. Chemical Spills. Related to the release of chemical products from a storage facility in West Virginia during 2014, several pieces of legislation were raised to address this potential pollution source. AWWA is recommending specific requirements in any proposed legislation to include a registration requirement for bulk chemical storage, leak detection/spill control requirements, prompt notification to utilities, guidance on the fate of contaminated water if within a water distribution system and allowance for utilities to recover the costs and damages.

2015 Spring WUC Meeting

Highlights of this meeting include:

1. **Clean Water Affordability.** One WUC member shared his story of facing \$2B worth of regulatory required improvements following a recent system-wide inspection and the subsequent activities that led to an agreement with EPA for a priority-based, phased-in compliance approach. In addition to the one system sharing their experience, there are other systems in the same situation. In response to this growing issue, representatives from NACWA explained on-going legislative efforts to change project financing options, set expanded payback periods, and establish Plans to identify an orderly path to compliance. These efforts also focus attention to the increasingly difficult time communities are having in complying with Clean Water Act requirements.
Although this is occurring within the clean water area, it is expected that drinking water utilities will also experience similar financial difficulties in coming years. Will the increasing cost of water service largely due to treatment requirements and stricter water quality regulation result in customers not being able to afford water bills. This fiscal issue has been discussed recently in the AWWA Journal's Open Channel column.
2. **Cybersecurity Update.** AWWA continues to promote the Water Sector's preference and ability to self-regulate our own cybersecurity protection efforts. At this point, the Water Sector has not been identified by DHS as critical infrastructure where 'a cybersecurity incident could reasonably result in catastrophic regional or national effects on public health or safety, economic security or national security'. Also, although EPA has the authority to establish cybersecurity requirements for public drinking water systems, they also support a voluntary approach, at this time.
 - As part of the Water Sector's effort to demonstrate member buy-in to the voluntary cybersecurity effort, the Sector Coordinating Council and the Government Coordinating Council have formed a Water Sector Cybersecurity Strategy Workgroup CIPAC. This group has been charged with the development of a strategy to promote and facilitate use of the NIST Cybersecurity Framework.
 - The AWWA does feel that the federal agencies responsible for monitoring cyber threats can be doing a better job of communicating these threats, developing the best protective measures against these threats and could improve remediation methods should cyber-attacks occur. Additionally, AWWA is interested in expanding liability protection to utilities that share or receive threat indicators and cybersecurity countermeasures.
3. **New AWWA Membership Model.** AWWA reviewing existing membership model in the hopes of improving both membership numbers in all three general categories and the understanding of membership value.
 - Studies completed in 2009 and 2012 identified consistent themes and from these findings, Project Objectives were identified including the optimization of membership and subsequent revenue, simplification of the membership structure, increasing membership value and to be more supportive of the Sections.
 - Primary change appears to be in the number of options available within each membership category.

4. Regulatory Update.

- UCMR4. Likely to include selected cyanotoxins; monitoring specific to these compounds to be scheduled within the four summer months as opposed to the typical four annual quarters for remaining contaminants. Final listing of contaminants likely to be published in 2016. AWWA at odds with EPA's CCL contaminant list development and is continuing to discuss these elements with EPA.
- LT2ESWTR. Staggered starting schedule depending on utility size. Two issues of concern remain at the April 1 start of the second monitoring round; state primacy agencies are collecting the monitoring data due to the lack of a central USEPA database and the USEPA's recommendation that Method 1623.1 should be used for this monitoring round. This method was developed relatively recently and may lead to increased recovery of organisms resulting in re-classification of the treatment facility.
- Legionella. EPA is planning to issue guidance information related to treatment options in light of Legionella outbreaks within large facilities in various areas. In response to these outbreaks, some facilities have installed secondary disinfection systems within their premise plumbing. As a result of these installations, these facilities are considered to be public water systems and subject to the regulatory requirements including operator certification.
- Lead and Copper Rule. This existing Rule may undergo significant revisions. The National Drinking Water Advisory Council Work Group is proposing significant changes to the existing LCR; these changes include various options including the separation of lead and copper sampling; the elimination of lead sampling in favor of 'customer-requested' sampling; copper sampling only within specific systems that are aggressive to copper and if to be sampled, from newer copper installations; increasing the emphasis on system-specific water quality parameters in increasing sampling frequency and expanding and improving educational efforts.
 - There is significant discussion on the subject to lead line replacements. The Work Group is proposing that the entire lead service be replaced as opposed to a partial replacement. They are stressing that this must be implemented in a way that best serves each specific system by taking into consideration lead line occurrence, location of the lead services, existing lead removal programs, ownership issues and existing economics factors.
- Storage Tanks. To date, EPA has not addressed storage tank regulation directly, but there was a meeting held in October 2014 to gather information on tank inspection and cleaning. At this time, EPA is evaluating data and other information in an effort to decide if a regulation, guidance or something else is appropriate. The AWWA has prepared a proposed Storage Tank Inspection Plan and will forward that to the EPA for consideration. This Plan has broken inspections into three categories (routine, periodic and comprehensive) and calls for flexibility in defining the frequency of inspections, leaving it to the utility to define what works best given local considerations.
- Distribution System Minimum Disinfectant Residual. In light of almost half of the states increasing required minimum disinfectant residuals within utility distribution systems following the occurrence of illness reported in several states (*Legionella pneumophila*, *Salmonella*, *Naegleria fowleri*), the EPA is considering changing the existing minimum requirement (residual disinfectant cannot be measured as undetectable in more than 5 percent of the samples each month) to an actual fixed numeric value. It is early in this discussion and more research is planned.