

The *Clean Water Exchange* is pleased to provide you with this *January News Alert*, providing updates on important legislative, regulatory, and legal issues affecting the clean water community.

Congress Asks for Water Sector Input on Possible Economic Stimulus Package

Congress is currently considering the contents of a second economic stimulus package in the event the economy slides further. There has been discussion on the Hill that this package could include \$5 billion in funding for wastewater infrastructure projects. As the economy falters, key congressional staff have sought the water sector's input on financial data, with a focus on "ready-to-go" projects that utilities can put into action within 90 days after passage of such a stimulus package. Initial figures were provided, and staff believed the information would help maximize the possibility of an infrastructure piece should a second economic stimulus package be required.

EPA Survey Finds National Needs for Wastewater Treatment Top \$200 Billion

EPA's long-awaited 2004 [Clean Watersheds Needs Survey](#) (CWNS), delivered this week to Congress, finds that total capital project needs for publicly owned treatment works (POTWs) now exceed \$200 billion. The Survey, first conducted in 1972, is intended to provide a summary of the costs associated with planned water quality or public health-related projects nationwide over the next 20 years. The 2004 survey report, which has been under review by the White House's Office of Management and Budget (OMB) for more than a year, puts the nation's clean water needs total at \$202.5 billion, up 8.6 percent from the previous survey in 2000. Despite the impressive figure, EPA's total underestimates the actual need, due in part to the limits placed on what projects can be included in the survey. EPA's total needs figure only includes those projects that are eligible for Clean Water State Revolving Fund (CWSRF) dollars and that meet rigorous documentation criteria, including justification for any costs estimates. Projects that were not identified as needs by January 1, 2004, are not included in these estimates. According to the survey report, the largest increases in national needs were associated with wastewater treatment plant needs, sewer repair needs, and stormwater management program needs. Exchange members are urged to distribute the Needs Survey's Executive Summary in support of their advocacy efforts.

Water Sector Presents United Front on Draft Chemical Security Legislation

Representatives from key water sector organizations have been meeting with staff on the House Homeland Security Committee to discuss concerns with draft legislation establishing security requirements for chemical facilities. Under the draft bill, the *Chemical Facility Anti-Terrorism Act of 2008*, clean water and drinking water agencies would no longer be exempt from Department of Homeland Security (DHS) chemical security regulations. Without the exemption, DHS has the discretion to require clean water agencies to submit vulnerability assessments, implement facility security plans, take steps to harden facilities, and potentially switch from chlorine to other treatment alternatives.

Watersector organizations have explained to committee staff that drinking water and wastewater treatment agencies should not be regulated under the same regime as private chemical manufacturers and suppliers. The draft legislation places too much discretion in the hands of the DHS Secretary and decisions made under this legislation could interfere with the utilities' federally-mandated obligations to protect the public health and environment pursuant to the Clean Water and Safe Drinking Water Acts. Staff members on the committee have expressed a willingness to explore an exemption or an alternate title within the bill for the water sector. An exemption was not included however in the committee print approved out of subcommittee on Jan. 23. It is important to note that this congressional committee print is an internal publication issued by the subcommittee that is meant to be a precursor to an actual bill. This is why there is no bill number as yet.

Exchange subscribers that are concerned with the draft bill are urged to contact the committee to seek an exemption for wastewater and drinking water utilities as the bill is expected to be quite controversial in both the House and the Senate.

EPA Considers Regulating Biosolids Incinerators under Clean Air Act

EPA is considering the regulation of biosolids or sewage sludge incinerators (SSIs) under Section 129 of the Clean Air Act (CAA), in lieu of Section 112. Under Section 129, SSIs would be subject to numeric emissions limits for particulate matter, sulfur dioxide, nitrogen oxides, hydrochloric acid, carbon monoxide, cadmium, mercury, lead, dioxins, and furans. New SSIs would be required to meet best available control technology limits and existing SSIs would be subject to the average emissions levels achieved by the best performing 12 percent of units in the category. Under Section 112, SSIs would be regulated as area sources and subject to less stringent emissions standards. Inclusion under Section 129 could lead to the closing of many SSIs nationwide.

A decision issued June 8, 2007 by the D.C. Circuit Court of Appeals in *Natural Resources Defense Council v. EPA* vacated and remanded both the Commercial and Industrial Solid Waste Incinerator Definition Rule and the Boilers Rule. At issue were EPA's past determinations regarding which incineration units should be handled under Section 112 versus 129. While the Other Solid Waste Incinerator (OSWI) rule was not specifically addressed in the case, EPA's Office of General Counsel believes the decision requires the Agency to also reconsider its December 16, 2005 final OSWI rule in which it determined that SSIs are not OSWIs and should be covered under Section 112¹. Reconsideration of the OSWI rule will trigger a new rulemaking process during which EPA must again determine whether SSIs are OSWIs subject to Section 129, or whether SSIs are not incinerating a solid waste and therefore are more appropriately covered by Section 112.

EPA Prepares Initial Testing Process for Endocrine Disruptors

Over the last 11 years, EPA and various stakeholders have debated the analytical methods, the testing methodology, and the range of chemicals that should be tested as part of EPA's Endocrine Disruptor Screening program. EPA announced at the December 17 public meeting in Arlington, Va., that it will issue orders within months under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Toxic Substances Control Act (TSCA) to begin the testing. Based on the potential for exposure and the high volume in which they are produced, 73 active ingredients and nine inert ingredients for pesticides are currently on EPA's list for initial testing.

EPA will issue orders to manufacturers, importers of pesticides, and pesticide registrants to conduct the necessary analyses of their products and to submit the data to EPA. Testing, which will be entirely paid for and conducted by the pesticide industry, will likely begin next fall. This is only the beginning of the screening process and the Exchange expects the list of chemicals to grow into the thousands. EPA's Office of Water has not been directly involved with the screening program, but the information obtained from the testing will certainly factor into the Water Office's future work on endocrine disruptors in wastewater effluent. The Exchange will continue to follow the screening program to monitor how its results could impact clean water agencies.

EPA Releases Report on Stormwater and Low Impact Development Practices

As part of its efforts to promote green infrastructure, EPA's Office of Water has released a report, [*Reducing*](#)

[Stormwater Costs through Low Impact Development \(LID\) Strategies and Practices](#). The report contains 17 development case studies in the U.S. and Canada that used LID practices, which help reduce stormwater runoff by allowing infiltration, evapotranspiration, and reuse of rainwater. The report analyzes the costs associated with LID, concluding that in most cases, LID projects resulted in 15 to 80 percent cost savings associated with stormwater control because of the reduced costs for site grading and preparation, stormwater infrastructure, paving, and landscaping. The analysis did not provide estimates on the additional economic benefits of LID, such as increased property values and improved quality of life, but does discuss these benefits.

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¹ A petition for reconsideration of this final decision reopened the debate on whether SSIs should be included in the OSWI rule. A January 22, 2007 *Federal Register* notice reaffirmed EPA's decision that SSIs were not OSWIs and should, therefore, be regulated under Section 112.