

Issue Number 6

October 2007

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

House Holds Hearings on Sewer Overflow Notification Bill and the 35th Anniversary of the Clean Water Act

During what was a busy week for Congress surrounding the 35th anniversary of the Clean Water Act, the House Transportation and Infrastructure (T&I) Subcommittee on Water Resources and Environment held a hearing October 16 on the Raw Sewage Overflow Community Right-to-Know Act of 2007 (H.R. 2452). The bill, introduced by Rep. Tim Bishop (D-N.Y.), would mandate monitoring and notification requirements for all sewer overflows. Sen. Frank Lautenberg (D-N.J.) has introduced a companion bill in the Senate, the Sewage Overflow Right-to-Know Act of 2007 (S. 2080), which contains similar requirements. All witnesses at the hearing supported the notion that the public has a right to know about overflows that could affect their health. The witnesses, however, differed over some of the bills specific provisions. For example, Benjamin Grumbles, EPA's assistant administrator for water opposed the use of the Clean Water State Revolving Fund (SRF) to pay for such activities. The SRF can only be used for capital projects and not for operations and maintenance, Grumbles said. To do so would reduce the capital available for water infrastructure construction while providing no additional benefit. Grumbles also discussed the fact that monitoring and notification regimens are already part of EPA's combined sewer overflow policy and sanitary sewer overflows (SSOs) are addressed through guidance documents to permit writers. Kevin Shafer, Executive Director of the Milwaukee Metropolitan Sewerage District, stated in his testimony that some municipalities, including Milwaukee, are already exceeding the requirements set forth in H.R. 2452 and would prefer to see a comprehensive policy to address SSOs to be developed by EPA.

On Thursday, October 18, the full T&I Committee held a hearing titled, The 35th Anniversary of the Clean Water Act: Successes and Future Challenges. During his opening statement, Chairman James Oberstar (D-Minn.) warned that while we have seen these [water quality] improvements, he would caution that our work is not complete. One-third of our waters do not meet standards we set 35 years ago. Our infrastructure is aging and the investments do not meet needs or demands. Representatives of federal, state, and local governments, industry, construction utilities, and environmental groups all echoed this in testimony before the Committee. Witnesses also discussed future solutions to 21st century challenges, including the need for a watershed approach, the need for a greater reliance on natural or green infrastructure

techniques, as well as the need for increased investment to address the growing funding gap facing the Nations clean water infrastructure.

Senate Passes WRDA Bill-Despite Presidential Veto Threat

The U.S. Senate approved the conference report on the Water Resources Development Act (WRDA, H.R. 1495) Sept. 24 by a vote of 81-12. The report, created by the conference committee, was an attempt to work out differences between the approved Senate and House versions of the bill. It paves the way for enactment of the final bill, by roll call vote in the House and Senate. The WRDA legislation was also approved by the U.S. House of Representatives Aug. 1 by a similarly strong vote of 381-40 and was presented to President Bush on Oct. 23. The President has threatened to veto WRDA because of: funding levels that include more than \$20 billion for U.S. Army Corps of Engineers projects; and because it authorizes direct funding in the form of earmarks for wastewater, drinking water, combined sewer overflow and mine cleanup projects that have traditionally only fallen under the purview of EPA. Overall, WRDA includes over 100 wastewater and drinking water infrastructure projects totaling \$794 million in 21 states. As a result of the strong congressional votes, both the House and Senate appear to have the two-thirds margin required to override a veto. The President is now required to act on WRDA in one of three ways: he may sign it into law within the ten day period, issue a veto, or let the bill become law without his signature (if he does not act within ten days of the bills Oct. 23 passage).

Key Water Quality Stakeholders Meet with EPA on Daily Loads

Earlier this month, members of the clean water community met with EPA officials from the Office of Wetlands, Oceans, and Watersheds; the Office of Science and Technology; the Office of Wastewater Management; and the Office of the General Counsel to discuss several total maximum daily load (TMDL) issues. This was the first meeting to: include representatives from each of these key EPA offices since the recent issuance of several TMDL-related guidance documents and policy memos on developing and implementing TMDLs in light of the U.S. Court of Appeals for the District of Columbia decision that all TMDLs must include a daily expression of the load. The meeting focused on recent implementation of the TMDL program, and how TMDL development is being impacted by EPAs new policy and guidance. While several TMDLs that incorporate these new daily load principles are currently in various stages of development, EPA is not aware of any instances where corresponding permit limits have been issued. The Anacostia River TMDL in Washington, D.C. for total suspended solids, which was part of the original challenge leading to the Court of Appeals decision, has been revised and may be the first test case under EPAs new approach. EPA is planning to provide states with additional information and case studies as they become available and is planning a web-cast in November or December of this year on the issue.

EPA Releases Memo on Compliance Schedules

EPA sent a memorandum to the Water Division Director of EPA Region 9 detailing when and under what conditions, compliance schedules may be included in Clean Water Act permits for water quality-based effluent limits. The memo, while essentially restating long-standing agency policy, reiterates some of the key principles of using compliance schedules. It focuses on how compliance schedules for effluent limitations based upon standards adopted after July 1, 1977 are allowed only if the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them. The memo also clarifies that while a compliance schedule must ensure that water quality standards are met as soon as possible, a compliance schedule may extend beyond the term of a permit, again where allowed under State law.

House Committee Releases Climate Change White Paper, EPA Works on Climate Strategy

Congress and EPA continue to develop programs designed to focus on climate change that could affect wastewater treatment operators. The House Energy and Commerce Committee recently released a white paper outlining what it envisions as the scope of a greenhouse gas cap-and-trade program. Greenhouse gas emissions from wastewater treatment plants are included in the waste services component of the commercial sector, which accounts for six percent of all U.S. greenhouse gas emissions according to the paper. While portions of the commercial sector could be included in a cap-and-trade program, the white paper indicates that the difficulty in measuring emissions from wastewater treatment plants accurately could limit their role in such a program. Yet there may be opportunities to take advantage of wastewater treatment plant efforts to capture methane gas for electricity generation to create credits or offsets in a cap-and-trade program.

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