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Intro text

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House Committee Holds Hearings on Clean Water Act Jurisdiction

The U.S. House Transportation and Infrastructure Committee held two days of hearings on July 17 and 19 to discuss the Clean Water Restoration Act of 2007 (H.R. 2421). The bill was introduced in late May by Committee Chairman James Oberstar (D-Minn.) and is intended to clarify the jurisdiction of the Clean Water Act (CWA). The bill seeks to ensure broad protection for isolated, non-navigable waters by removing all references to "navigable waters" from the CWA and replacing them with the term "waters of the United States." The purpose of the recent hearings was to establish a record on the many issues associated with CWA jurisdiction and the implications of any changes to the law. The list of witnesses included former EPA Administrators, scholars, scientists, and state and municipal officials. Most witnesses testified in support of the legislation, indicating that the proposed change would clarify congressional intent when the CWA was originally passed and deal with current confusion which has arisen due to recent Supreme Court decisions. Among the state officials who testified, Montana Governor Brian Schweitzer supported the bill but expressed concern about potential "unexpected consequences" if jurisdiction is expanded too broadly. Other witnesses expressed concern over expanded federal CWA jurisdiction and increases in permit backlogs and permitting costs.

No major action on the bill is expected until after the congressional August recess, at which time the bill's sponsors will begin a member-to-member push for passage in the House. Efforts are also expected to pick up after the recess in the Senate, where Sen. Russ Feingold (D-Wis.) introduced a similar version of the bill on July 25. Of concern to the municipal clean water community is that H.R. 2421 and its Senate counterpart do not include an exemption for man-made bodies of water that are part of waste processing systems, such as isolated wetlands or stormwater retention units. Such an exemption has been included for many years in EPA and U.S. Army Corps of Engineers regulations. Members of the clean water community, including APWA, WEF, and NACWA, also met on July 25 to discuss the legislation and its potential impact on clean water agencies. NACWA, APWA and WEF will continue to work with members of Congress and other groups in Washington to advocate on behalf of the clean water community as discussions on the bill continue.

EPA Releases Report from its Recreational Water Quality Criteria Experts Workshop

The proceedings from the March 2007 EPA workshop on the development of new, scientifically-based recreational water quality criteria to protect human

health were released on June 15

(<http://www.epa.gov/waterscience/criteria/recreation/>). The report summarizes the experts' findings in seven topic areas and outlines near-term research needs that could be accomplished in two to three years to support development of new or revised criteria by 2012. While EPA has made it clear that the experts' report does not reflect Agency policy, the feedback from the experts will likely be a major consideration as EPA continues to develop the new recreational water quality criteria mandated by the Beaches Environmental Assessment and Coastal Health Act of 2000 (BEACH Act). The development of these new criteria will eventually affect the municipal clean water community, especially those agencies that discharge to coastal recreational waters.

EPA is currently involved in litigation, Natural Resources Defense Council (NRDC) v. EPA, regarding its failure to establish these new recreational water quality criteria in a timely manner. This case is focused on how much time EPA will be given to meet its BEACH Act obligations, and the experts' report could factor significantly into the ongoing litigation. Additionally, the report will also help guide EPA's research plan outlining how it will meet its obligations under the BEACH Act, which is expected to be released by the end of the summer.

House Approves 2007 Farm Bill

The full U.S. House of Representatives on July 27 approved a five-year, \$280 billion Farm Bill (H.R. 2419) that would increase conservation funding, including money aimed at improving water quality. Organizations in the water sector have worked hard on behalf of the municipal clean water community to ensure water quality protections were part of the massive Farm Bill. The bill includes the creation of the Regional Water Enhancement Program (RWEP), which authorizes \$60 million per year from 2008-2012 for cooperative agreements between the U.S. Department of Agriculture (USDA) and agriculture producers and other entities including local government units, to improve regional water quality or quantity in priority areas, including but not limited to the Chesapeake Bay, Klamath, Everglades, and Upper Mississippi River Basins. The bill also would provide \$150 million for river restoration projects in the Chesapeake Bay watershed and \$200 million to create a baseline for the Small Watershed Rehabilitation Program. Water sector groups will seek to expand the scope of the program to other watersheds.

Congress Takes Action to Address Regulatory Office Authority

Congress has now taken initial steps to limit implementation of an Executive Order signed earlier this year that gives the White House extensive control over EPA and other federal agency rulemaking activity. On January 18, 2007 President Bush signed Executive Order 13422, which, in part, requires the placement of an administration-selected official or regulatory policy officer (RPO) at each federal rulemaking agency. The officers would have the authority to review and approve all major rulemaking activity at the agency. The Executive Order also included implementation of provisions from a proposed policy on

'good guidance' that was released for comment by the White House's Office of Management and Budget (OMB) on November 23, 2005. This proposal could have negative consequences for the municipal clean water community, as it could lead to additional delay in the implementation of rules promulgated by EPA to address important clean water issues.

The U.S. House of Representatives voted on June 28 to bar OMB from using funds to enforce the controversial executive order. First offered as an amendment by Reps. Brad Miller (D-N.C.) and Linda Sanchez (D-Calif.), the provision was attached to the fiscal year 2008 financial services spending bill, which includes White House offices such as OMB. The House agreed to the amendment on a voice vote before approving the overall bill, 240-179. There is no word yet on whether the Senate will approve a similar provision or if the President will be inclined to veto such a bill.