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The Authoritative Resource on Safe WaterSM

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Perchlorate Bill Approved by House Subcommittee

Yesterday the House Subcommittee on Environment and Hazardous Materials approved a bill mandating that the U.S. Environmental Protection Agency (EPA) issue a final drinking water regulation for perchlorate within 18 months of enactment. The bill, H.R. 1747, sponsored by Rep. Hilda Solis, D-Calif., was approved by a voice vote that was not unanimous. AWWA had said in meetings on the Hill that it could support the bill "if amended" to require that EPA make a decision by a date certain whether to regulate perchlorate, rather than Congress making that decision. An amendment consistent with the AWWA views was offered by Rep. John Shimkus, R.-Ill., but this failed on a vote of 12-15 straight across party lines. As approved, the bill does not specify a maximum contaminant level for perchlorate. The next step is consideration by the full Committee on Energy and Commerce. That markup is not yet scheduled.

Congress Overrides Veto of Water Resources Bill

Both houses of Congress have voted by the two-thirds margin necessary to override the President's veto of the Water Resources Development Act (WRDA), and the bill now becomes law without the President's signature. The House took the action on Tuesday by a vote of 261-54 and the Senate voted yesterday by a margin of 79-14, to approve the bill, "the objections of the President of the United States to the contrary notwithstanding."

WRDA authorizes at least 940 U.S. Army Corps of Engineers projects for flood control, navigation, and environmental restoration, at a cost totaling \$23.2 billion. Many of the projects would address hurricane damage along the Gulf of Mexico coast and damage in the Everglades. Although these projects are now authorized, each project is still subject to the actual appropriation of funds.

House Homeland Security Chair to Introduce Stronger Chemical Security Bill

U.S. Rep. Bennie Thompson (D-Miss), Chair of the House Committee on Homeland Security, said this week he plans to introduce legislation early in 2008 to strengthen chemical plant security. While Thompson did not mention the water utilities' current exemption from chemical security regulation, the Department of Homeland Security has concluded that the exemption should be revoked.

Thompson plans to begin hearings on his legislation in early December. Meanwhile, U.S. Rep. Frank Pallone, D-N.J., and chair of the House Energy and Commerce Subcommittee on Health, said he is drafting a bill that would make EPA, not DHS, the lead federal agency for new chemical security regulations on water and wastewater systems. A Pallone spokesperson said this bill would be similar to legislation he introduced in 2005 that gave EPA the authority to require the

use of “inherently safer technologies” and included a number of other security and public safety measures.

Farm Bill Goes to Senate Floor; Hard Work Still Lies Ahead

The full Senate this week began consideration of a new Farm Bill that contains significant increases in conservation funding and source water protection programs, but the legislation faces a tough road ahead. President Bush has threatened to veto the bill over spending levels and some senators want to attach amendments on issues ranging from the war in Iraq to global warming.

The bill contains a Regional Water Enhancement Program which allows the Department of Agriculture to use funds for source water protection activities on a watershed basis. Utilities could receive funds to coordinate such projects. AWWA has been working with other water organizations, agricultural groups, and environmental groups to make that a regular federal program, not just a grant of authority.

Additional Committee Takes Up Legislation on 21st Century Water Commission

The House Subcommittee on Water Resources and Environment today will be the second panel to take up H.R. 135, the Twenty-First Century Water Commission Act. This bill would create a commission that would assess current and future water supplies, demand, and management practices and then develop recommendations for a comprehensive national water strategy. Commission members would be appointed by the president and congressional leadership. The House Natural Resources Committee approved the bill on October 10.

Portland Loses Appeal of Crypto Rule

On November 6 the U.S. Court of Appeals for the District of Columbia Circuit denied a petition for review of EPA’s Long-Term 2 Enhanced Surface Water Treatment Rule (Long-Term 2 Rule), issued in January 2006. The City of Portland, Oregon, had sought the review and the City of New York had intervened on Portland’s behalf. Portland sought to have the rule remanded to EPA on grounds that the Agency failed to conduct required cost benefit analyses, gave inadequate public notice and opportunity for comment, failed to use the best available science, ignored significant comments on the draft rule, and issued a final rule unsupported by the record.

Because Portland relies on uncovered finished water reservoirs, it faces significant expense under the rule to either cover the reservoirs or apply additional treatment after the water leaves the reservoir but before human consumption. New York also uses uncovered finished water reservoirs. The cities argued that EPA was required to conduct a separate cost-benefit analysis for each treatment technique it proposed (that is, covering the reservoirs or adding additional treatment), rather than the one aggregated cost-benefit analysis EPA relied upon for the rule. The court rejected this argument, saying cost-benefit analyses would only have affected the rulemaking if the cities showed that the treatment techniques EPA proposed were infeasible--something neither city claimed. Even if EPA had erred by failing to conduct the analyses, the final rule would remain unchanged, making this a “harmless error,” the court said.

As always, please get in touch with your AWWA Washington Office if you have questions or comments.