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The Authoritative Resource on Safe Water<sup>SM</sup>

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### **House Passes Wastewater Infrastructure Bill; Senate Action Coming on Drinking Water and Wastewater**

On Thursday the House of Representatives passed a bill (the Water Quality Investment Act, H.R. 1262) addressing a host of wastewater issues. The vote total was 317-101 in favor of passage. This bill would

- boost funding for the wastewater SRF program to \$13.8 billion over five years, with states being able to distribute up to 30 percent for forgiveness of principle or a negative-interest loan;
- authorize \$1.8 billion in grants for sewer overflow projects;
- authorize \$300 million annually for five years for state management assistance;
- authorize \$150 million annually for five years to address sediment contamination in the Great Lakes;
- authorize \$100 million over five years for research and demonstrations for pollution prevention, including \$20 million in grants to non-profits to provide technical and managerial assistance to rural areas and small municipalities ;
- authorize \$50 million a year for five years for grants to pilot projects for wastewater reclamation; and
- require sewage treatment plants to implement an overflow alert system.

Meanwhile, the Senate Committee on Environment and Public Works is working on its own water infrastructure legislation for both drinking water and wastewater. Early drafts seen by AWWA would provide a significant increase in funding for both state revolving loan fund programs, plus some administrative improvements. We expect to see a bill introduced this spring.

H.R. 1262 puts together five bills from the previous session of Congress that passed the House, but not the Senate. The section regarding sewer overflow alerts has been an issue of interest to the AWWA Water Utility Council (WUC), and AWWA provided substantive comments on the issue last year. The current bill would require wastewater treatment works to implement a feasible method, technology, or management program for monitoring overflows and alerting operators in a timely manner. The operator, in cases where the overflow has the potential to affect human health downstream, would have to notify the public as soon as practicable, but no later than 24 hours after the operator knows of the overflow. If the overflow may imminently and substantially endanger human health, the operator would have to immediately notify public health and other relevant entities. Each overflow would have to be reported to EPA or the state. Exceptions for these reporting requirements would be backups into a single-family residence and overflows that occur during maintenance, but are controlled. EPA would be required to issue regulations for the program one year after enactment. Those regulations would also

define when a spill had the potential to threaten human health. Having an alert program would be part of the issuance, modification or renewal of a discharge permit.

AWWA did tell Congress in the previous session that such legislation could be improved by making sure that alerts are only warranted when overflows or spills pose a significant risk to public health. The addition of a rulemaking process in this bill to determine what constitutes a significant risk is an improvement. We have also asked that when entities apply for NPDES permits, they be required to identify drinking water systems that could be affected by that entity's spills.

**Stimulus Funds Almost Ready for States.** EPA sources tell AWWA that the Agency should be ready to move stimulus funds to any state within two weeks after a completed application is received from the state for its SRF allocation. However, the "Buy American" provisions may slow things down because the Office of Management and Budget (OMB) is coordinating government-wide policy on that issue. The Buy American provision is complicated and it's taking time to sort through how it will be applied, sources in several agencies say.

AWWA has learned that provisions in the stimulus bill (properly called the American Recovery and Reinvestment Act) that provide an exception for the Buy American provisions if they conflict with international treaty obligations, may never apply to local drinking water projects. No international treaty obligation applies to local funds, AWWA has learned, and SRF funds, once committed to projects, are considered local funds for that purpose. AWWA has also learned that EPA is considering whether it can do "nationwide waivers" under the law for any products or materials that are not manufactured in sufficient quantity or quality in the United States. Absent a nationwide waiver, sponsors of stimulus projects must apply for a waiver on a case-specific basis, based upon the unavailability of American iron, steel, or manufactured products or a project cost increase of at least 25 percent from using such American products. EPA must grant or deny the waiver, and if granted, must publish the decision and supporting materials in the Federal Register.

Utilities are advised to contact their state SRF authority immediately if they have projects ready or nearly "shovel ready." At the state level, any funds not committed to projects that are under construction or binding contract for construction by 2/17/10 will be reallocated to other states.

**Perchlorate Under Review - Again.** AWWA has learned that EPA Administrator Lisa Jackson is considering the Agency's regulatory determination on perchlorate. In December the Bush Administration announced a decision to set a health effects advisory for perchlorate at 15 PPB, to not set a standard for the chemical in drinking water, and to seek review of perchlorate health effects by the National Academy of Science (NAS). That decision is not final and is now under review. It is possible that NAS will not be asked to weigh in on the issue and that the agency will proceed to set an enforceable drinking water standard for perchlorate.

As always, please contact your AWWA Washington Office if you have questions or comments.