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The Authoritative Resource on Safe Water SM

Washington D.C. Report

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Administration Will Seek Chemical Security Authority Over Water.

AWWA has learned that a decision has been made at the Cabinet level that the Administration should support an amendment to the Department of Homeland Security's chemical security program to bring water and wastewater utilities into that program for the first time. When the program – properly called the Chemical Facility Anti-Terrorism Security (CFATS) Program) - was created in 2006, the water sector was specifically excluded from it.

This decision must still be cleared with the White House, and it is likely that a struggle between DHS and EPA over who will administer the program for water and wastewater utilities will slow Administration decision making on this matter. Legislative proposals to bring water and wastewater into the program have been discussed primarily in the House and Senate Homeland Security Committees, which have authority over DHS, rather than in the committees that oversee EPA. However, competition between these Hill committees is likely to be fierce, whatever the Administration recommends.

The bottom line is that no final federal action on this matter is imminent. Having said that, the recent decision at the Administration's upper levels is nonetheless very significant, as it ends a debate within the Administration about whether the water sector should be brought into the federal regulatory program or left to work under a voluntary standards approach. As you remember, the Administration supported our bid to be exempt from the law that created the CFATS program. Within the Administration that decision has now been reversed, and we are likely to see significant legislative action on this matter in 2008.

The CFATS program:

- Applies to all facilities storing or using more than threshold amounts of specified chemicals, including gaseous chlorine.
- Requires a covered facility to prepare and submit a Security Vulnerability Assessment (SVA) to establish its risk profile. In addition, the facility must prepare, submit, and implement a Site Security Plan (SSP) to address both the SVA and applicable risk based performance standards (RBPS).
- Focuses more scrutiny on those facilities that pose the greatest risk to a surrounding community, although the risk of chemical theft could bring even remote facilities some level of attention.
- Provides for DHS review of the SSP and a determination as to whether or not a facility has met the requisite level of performance given its risk profile. DHS has the authority to require

changes to an SSP that it deems inadequate. This does NOT include the authority to order process changes or chemical substitutions (so called Inherently Safer Technology authority).

- Makes it illegal to operate without an approved Security Vulnerability Assessment and Site Security Plan.
- Gives DHS criminal and civil penalty authority and, ultimately, the authority to order a facility to shut down if serious security deficiencies go uncorrected.

At present time, this program is not widely seen as onerous, at least by the Washington associations representing the chemical community. The Water Utility Council will discuss this matter in detail and will need to make several important decisions, including our position on legislation (expected to be introduced) and our preference as to which federal agency will administer the program for the water sector (if we are to be subject to the program).

Chemical Security Survey Going Out.

On a related matter, AWWA and the other associations representing water and wastewater utilities are cooperating to ask their members to participate in an anonymous web-based survey concerning utility chemical security practices. An AWWA utility advisory will go out tomorrow with the request to participate and the web address for completing this survey. Please don't fail to participate. The information we get back will be extremely important in determining how "necessary" it really is to bring the water sector into the CFATS program and what kinds of security measures are reasonable and appropriate for the water sector if we are to be covered. In large part, the Administration's decision to recommend including the water sector in CFATS reflects its frustration at not being able to say with certainty what the sector is doing now.

House Passes Trust Fund Bill for Low Income Housing.

The House of Representatives last week passed H.R. 2895, the National Affordable Housing Trust Fund Act of 2007. As approved, the bill would dedicate an estimated \$800 million - \$1 billion annually to a new Treasury Department trust fund account, with the revenues coming from a new dedicated "charge" of 1.2 percent on the value of mortgages held by Fannie Mae and Freddie Mac, two government-chartered, privately owned financial institutions charged with expanding mortgage markets. The Trust Fund would make grants to states and local governments for building or rehabilitating housing units affordable to low-income renters, and to assist first-time home buyers with down payments, with priority given to the lowest-income families.

Although this bill does not directly affect water utilities, its approval by a vote of 264-148 shows that the Congress may be more receptive to creating trust funds than it has been in recent years. Many of the issues, questions, and arguments that must be answered about a water trust fund were also raised about H.R. 2895 and were swept aside, once a funding source was identified.

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