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The Water Quality Management Professionals

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Legislative Policy & Regulatory News
From WEFTEC 2009
(Libby Ford)

I. Legislative

Water/Wastewater Infrastructure Funding

- **Likelihood "returned" Stimulus Money will be available and how it will be distributed.** According to Jim Hanlon (EPA Director of Wastewater Management), EPA will be requiring all States about 60 to 75 days before 2/17/10 to report in on whether they will have all their stimulus money under contract by 2/17. At about the same time, they will also be asking those States that will have all their stimulus funds under contract by 2/17 what their "depth" of projects that are ready to go but which did not receive stimulus money. \line\line Under the law, EPA must take back all stimulus funding not under contract on 2/17. There is no room for extensions. (This being said, nothing in politics is absolute.) Returned monies will be distributed to States that have used all of their money and shown they have remaining projects that are ready to go, according to the same formula that was used to allocate the original stimulus money. \line\line EPA intends to distribute any returned funds very quickly and will expect that that money will be under contract very quickly. \plain\fs24\par\pard}
- Not likely we will see a 2nd Stimulus Bill, due to size of federal deficit.
- FY 2010 may be only a year with a significant SRF bump up due to deficit
- A conceptual Trust Fund Bill is moving forward slowly, lots of networking is being done.

Watershed

- NACWA is working with NGOs and has a draft bill designed to make watershed needs and water quality the focus for permitting and imposing new requirements. House (and perhaps Senate) introduction in early 2010.

Climate Change

- Little likelihood that a federal bill will be passed in 2009

Clean Water Act

- Other than addressing the “waters of the US” issue, there is no appetite within the O’Bama administration to push for CWA Amendments
- EPA agrees that a legislative fix is needed on a “Waters of the US” issue. Little likelihood a bill will be passed in 2009, unless Congress wants to have an “environmental” win.

II. Policy

Lisa Jackson’s (and hence EPA’s) triple mantra:

- Base decisions on “Sound Science”
- Follow the rule of law
- Decisions and the basis of actions must be transparent

Lisa Jackson’s Key Goals

- Climate Change and Adaption
- Sustainable communities (including funding/financial)
- Environmental Justice

Enforcement

- EPA will be releasing a plan to increase the effectiveness (and probably the number) of enforcement actions on 10/14/09 and will be testifying before Congress on it the following week. [Already released. If you didn’t get the Nixon Peabody Alert on this and would like to receive it, please let Libby know.]
- Wet weather will continue to be a major enforcement focus.

Increased Role of CEQ

- This is the vehicle through which the Obama White House will be insuring that it has direct input on major issues.

Great Lakes Water Quality

- EPA has a draft Plan that has been submitted to OMB.

Climate Change

- Office of Water’s 2008 Plan will be updated by 2010. No significant changes but more emphasis on energy efficient (in WWT) and sustainable infrastructure. More cross-agency coordination through CEQ.

III. Regulatory

New Loads in Impaired Systems

- Due to a court decision, EPA will be revisiting the current rules on when/how a new or expanded source can be permitted while the water body is still on the impaired waters list “as soon as possible.” May draw from air regulations of new sources in non-attainment waters. Off-sets and trading may be identified as available tools to address.

Ammonia Water Quality Standards

- New data shows that freshwater mussels are more susceptible to ammonia than salmonids (which the current WQS are derived from). This will likely lead to lower standards, may (or may not) be applied only to waters with freshwater mussels.

Definition of POTW Secondary Treatment/Nutrient

- **EPA must respond to NRDC petition that the “secondary treatment” standard for municipal wastewater treatment plants be updated** and that the standard be expanded to include nutrient limits. EPA is looking at whether it **can** and, if so, should re-define “secondary treatment.” EPA won 2 cases in the past that challenged this definition. The main reason EPA was able to convince the Court that nutrients did not have to be included in the definition was that it convinced the Court that there were other regulatory programs in place that were adequately addressing POTW nutrients. EPA, in responding to the petition, is asking itself whether this is true today. There are incredibly effective POTW nutrient programs out there. Still, nutrient-related water quality continues to get worse, not better. EPA’s CWA § 202(a) Plan for the Chesapeake Bay Plan represents EPA’s current thinking on nutrient water quality programs. It identifies 5 major sources of nutrients: i) animal and non-animal agriculture, (ii) Urban run-off, (iii) air deposition, (iv) on-site disposal systems, (v) POTW/municipal wastewater. Of these POTWs, for the most part, are already controlled better than the other 4. EPA now has a free CD available with N removal technical documents and references. An N-removal design document will be available by 12/09.
- **POTW Peak Wet Weather** (aka Blending) – 2005 draft EPA policy got “stuck” in the Bush Administration. EPA Washington (Office of WW Management) still believes that this draft policy is a good starting point for discussions. The prohibition against by-passing treatment units (in place since the early 1980s) is the controlling regulatory requirement. The 2005 draft policy represents EPA’s on the record interpretation of these regulations. [Topic of discussion seems to be if entire POTW within the fence line is what needs to be capable of consistently producing an effluent meeting secondary treatment and other S/NPDES requirements, then is it a “By Pass” if some of the wastewater stream does not pass through every treatment unit, as long as the final effluent complies with the S/NPDES permit? (This is likely a gross over-simplification of the issue.)]

S/NPDES Permitting

- Expect increased EPA oversight of State (etc.) S/NPDES Permitting

EPA S/NPDES Enforcement

- Office of Water thinks that it and EPA's enforcement arm (OECA) "are working together better."
- Expect increased enforcement

Municipal Stormwater Permitting

- Based on the 2008 National Research Council (NRC) stormwater report, EPA will be modifying its MSA (Metropolitan Sampling Area) regulations to expand the number of communities involved due to more recent "growth". A lot of communities on the edge of defined MSA communities have grown to the point where they can have a material impact on stormwater quality. Also flow and velocity of stormwater discharge are of concern. EPA not yet sure how they will address these parameters in the modified regulations.

Pharmaceuticals and other Microconstituents in Wastewater and Natural Waters

- EPA will be releasing a report in the fall of 2009 on treatment effectiveness.
- 80% of the targeted pharmaceuticals/PCP in natural waters are from domestic sources. Most of these are discharged through POTWs (which do remove some).

Pesticide Application and S/NPDES Permits

- By Court order, EPA must propose a regulation or general permit by spring 2011. EPA is on track to issue a proposed general permit in April 2011.
- EPA anticipates the General Permit will trigger 350,000 NOIs (due to applications in or near water).

Power Plants

- Proposed revised 316(b) rules for existing OTCWIS will be proposed summer 2010.
- Update to its categorical standard is intended to be focused mainly on discharges from coal burning power plants.

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