



New York Water Environment Association, Inc.

The Water Quality Management Professionals

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Recent Environmental Legislative, Regulatory and Judicial Developments¹

May 2006 through October 31, 2006

I. NEW YORK

A. Legislation

This wrap-up is derived from information posted by the Business Council of New York. (<http://www.bcnys.org/inside/env/06environmentwrapup.htm>). The following bills passed both houses. If they were subsequently signed by the Governor, this is also noted.

Spill Notification (Chapter 616, Laws of 2006)

S.7307-B (Libous) / A.10757-B (Lupardo)

- Requires DEC to notify municipal officials within 48 hours of spills that "may threaten public health or environment."

Site Investigations (Chapter 707, Laws of 2006)

S.7636-A (Winner) / A.10633-A (Lifton)

- Requires notification to land owners of the results of environmental tests conducted by third parties. Affects state superfund, brownfield, and oil spill programs.

Hazardous Waste Landfills (Vetoed)

S.8107 (Maziarz) / A.11713 (DelMonte)

- Prohibits approval of new or expanded hazardous waste management facilities in a location "with potential to discharge into the Great Lakes system." Affects commercial and "off-site" facilities."

¹ For more information, please contact Libby Ford, QEP at 585-263-1606 (lford@nixonpeabody.com).
<http://www.nixonpeabody.com/>

The NYWEA GAC thanks Nixon Peabody LLP for its on-going support of this newsletter. It also thanks WEF's Government Affairs Staff, The Business Council of New York and NACWA for much of the information in this newsletter. If you are not already a member of one or all of these organizations, visit their web pages and consider becoming a member. The WEF web page can be reached through the NYWEA web page at <http://www.nywea.org/index.htm>; the NACWA web page is at www.nacwa.org and TBCNY is at bcnys.org. NYWEA gratefully acknowledges the following sources of the information contained in this newsletter: BNA Environmental Reporter, EPA Administrative Law Reporter, Water On-Line, Pollution On-Line and Environmental Protection E-News: these are excellent resources for the environmental manager, attorney or consultant.

Vehicle Dismantlers (Chapter 180, Laws of 2006)

S.8405 (LaValle) / A.7633-B (Eddington)

- Regulates activities of vehicle dismantlers; applies to entities that receive more than 25 "end of life" vehicles per year, or stores more than 50 such vehicles at an given time.

Diesel Fuel & Vehicles (Chapter 629, Laws of 2006)

S.8185 (Marcellino) / A.11340 (Grannis)

- Requires ultra low sulfur diesel fuel and best available technology for on- and off-road "heavy duty vehicles" (GVW of 8,500 lb. or more) that are owned by, operated by or on "behalf of," or leased by a state agency or a state or regional public authority.

Creosote (Passed both houses, not yet delivered to the Governor)

S.7804 (Spano) / A.10737 (Brotsky)

- Bans the manufacture, sale and use of creosote as a wood preservative; regulates disposal of wood treated with creosote; exempts wood used by railroads and for utility poles

Brownfield Tax Credits (Chapter 420, Laws of 2006)

S.8297-A (Spano) / A.11993 (Rules/Pretlow)

- Clarifies that condos and co-ops constitute "qualified tangible property," and therefore are eligible for the tangible property credit component of the state brownfield redevelopment tax credit.

Ocean Protection (Chapter 432, Laws of 2006)

S.8380 (Johnson) / A.10584-B (DiNapoli)

- Enacts the "New York Ocean and Bays Protection Act." Establishes as the policy of the state to conserve, maintain and restore coastal ecosystems; to promote "sustainable" activities and uses; maintain their ecological integrity; and to apply "caution" when risks are uncertain. Establishes a New York Ocean and Great Lakes Ecosystem Conservation Council

NYWEA Joins with Municipal Associations To Advocate and Educates To Increase Some SRF Grant State Percentage to 100%, Longer Repayment Terms

A letter was sent to elected officials at all levels of government which was co-signed by The Association of Towns of the State of New York (AOTSNY), New York Conference of Mayors and Municipal Officials (NYCOM), the New York Water Environment Association (NYWEA) and the New York State Association of Counties (NYSAC). The letter stated, in part, "Massive funding gaps are jeopardizing New York's hard-won water quality gains of the past thirty years. The wastewater and water infrastructure needs of New York State are an ever-increasing burden on local taxpayers. The signers are very concerned about the protection of our environment and the economic impact on local communities in New York. We seek your support for an initiative that promises to address both these concerns. ... The State Revolving Loan Fund program currently is providing low cost (low interest) loans to municipalities to ease the financial hardship on local communities. The present 50% subsidy by the state to reduce the interest on project bonds provides some relief; however, increasing the subsidy to 100% (no interest bonds) and increasing the repayment term to thirty years will make many projects more affordable for

local communities, It will, in many cases, make the difference between a yes or no decision on promptly implementing needed water and wastewater programs. Our research on this issue concludes sufficient funds are available to implement the increase in loan subsidy without increasing funding to the State Revolving Loan Fund. The following tables indicate savings to local communities at the new subsidy levels. As you can see, the savings are substantial . . .

Source: <http://www.nywea.org/press-rel/n-6-01.cfm>

B. Policy

1. Water

City of Rome Water Pollution Control Facility and the Town of Riverhead Sewer District Advanced Wastewater Treatment Facility Win First Place Pollution Control Awards

On August 31, 2006 New York State Department of Environmental Conservation (DEC) Commissioner Denise M. Sheehan announced the winners of the New York State Department of Environmental Conservation (NYSDEC) Andrew M. Weist Operations and Maintenance (O&M) Excellence Awards for municipal wastewater treatment plants. Treated wastewater from both of the municipal treatment facilities receiving State awards exceeded regulatory standards during 2005. Municipal treatment plants submitted award applications to DEC in March, including copies of their regulatory permits and descriptions of their facility operations, staffing, cash flow and physical plant layout. The winners were selected in categories based upon their size and degree of wastewater treatment they provide. Facilities eligible for one of the small categories process less than one million gallons of wastewater per day; those in the medium category process one million to 10 million gallons per day; and those in the large category process more than 10 million gallons per day.

Source: <http://www.dec.state.ny.us/website/press/pressrel/2006/2006143.html>.

C. Judicial and Enforcement

1. Water

If you would like to receive a summary of important CWA cases from the last year, please send Libby and e-mail at lford@nixonpeabody.com.

Former NYC Employee Admits To Falsifying Drinking Water Records

A former employee of the New York City Department of Environmental Protection has pleaded guilty to a felony charge of making false entries in the department's drinking water monitoring records, federal prosecutors announced Sept. 13 (*United States v. Storms*, S.D.N.Y., No. 06-770, *guilty plea entered 9/13/06*). Defendant admitted to having made false entries in a DEP log book for monitoring of drinking water turbidity, prosecutors said. He had gone to the DEP water system's Catskill Lower Effluent Chamber to carry out a turbidity monitoring procedure, but he did not perform all the necessary steps in the testing and then entered false numbers in the log to make it appear that he had.

Source: Environment Reporter, BNA, Inc. 9/22/06.

D. Regulatory

1. Water

SPDES Multi-Sector General Permit Proposed

NYSDEC has released the draft SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (GP-06-01). This draft permit is intended to replace the SPDES General Permit for Stormwater Discharges Associated with Industrial Activity (GP-98-03) and has been revised to more closely reflect the USEPA's Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. The draft General Permit is a 5 year permit that covers new and existing discharges of stormwater to waters of the United States from industrial activities. There are several major changes in this draft general permit. The permit format has changed to include general requirements applicable to all facilities with permit coverage and industry specific requirements that have been tailored to address 31 different industrial activities. Requirements are no longer based solely on the facility's primary Standard Industrial Code (SIC) or narrative description. If a facility has more than one industrial activity occurring on-site, those industrial activities are considered to be co-located and a facility must comply with the requirements for each specific industrial activity that is applicable at the facility. A copy of the draft permit can be found at: <http://www.dec.state.ny.us/website/dow/gp0601.pdf>.

Source: <http://www.dec.state.ny.us/website/dow/stormsheet.html>

State Pollutant Discharge Elimination System (SPDES) Priority Ranking List

The NYSDEC has released its updated Environmental Benefit Permit Strategy (EBPS) priority rankings in conformance with section 17-0817(6.) of the Environmental Conservation Law. The lists are based on a ranking system that prioritizes permits for full technical review and, when necessary, modification. The full technical review is conducted in one of nine regional offices or the central office, depending on the location of the discharge and whether the permit has been assigned to the central office based on USEPA designation as a major discharge or state designation as a centralized significant industrial permit. NYSDEC notes that the EBPS priority ranking system should not be confused with the SPDES permit renewal process. Most permits are renewed prior to expiration by a separate administrative procedure that makes no provisions for technical modifications. The SPDES permit lists that are posted on the DEC website are based on ranking scores and reflect the priority list for each office. The ranking scores are updated on a continuous basis due to the discovery of new information and the issuance of modifications that eliminate the factors which go into each score. The top 10% of each list represents a workload objective during this fiscal year.

Source: <http://www.dec.state.ny.us/website/dow/06ebpsdoc.pdf>

II. FEDERAL

A. Congress

Water Infrastructure Trust Fund Bill Move Forward

Cosponsors continue to be recruited for the *Clean Water Trust Act of 2005* (H.R. 4560), with efforts to date yielding 25 Representatives who have signed on to H.R. 4560. The Water

Infrastructure Network (WIN) and NACWA have hosted briefings on the trust fund bill. After Congress completes its lame-duck session in November, NACWA will convene a meeting of selected congressional staff, stakeholder groups, and WIN members to come to an agreement on a source of revenue for a new clean water trust fund. The current bill then will be revised and readied for reintroduction next year.

Source: http://www.nacwa.org/private/legreg/legupdate/leg_tracker.cfm

Congress Leaves Town Without Passing EPA Budget, NBP Funding Included in FY 2007 House Bill

September's brief congressional session left little time for lawmakers to pass the slew of spending bills needed to keep government agencies, including the U.S. Environmental Protection Agency (EPA), up and running in the new fiscal year. Congress completed only two appropriations bills – Defense and Homeland Security – leaving nine additional spending bills to act on when Members of Congress reconvene for a lame duck session in November. With the change to the new federal fiscal year on October 1, Congress was forced to pass a two-month Continuing Resolution that will keep EPA's doors open until November 17. The House earlier this year passed the *Department of the Interior, Environment, and Related Agencies Appropriations Act of 2007* (H.R. 5386) that included a cut of \$200 million to EPA's clean water state revolving fund (CWSRF). The Senate Appropriations Committee then agreed to the House cut, which would drop funding for the CWSRF to \$688 million. Federal funding for the CWSRF has been slashed nearly 50 percent from \$1.35 billion in FY 2004 to the current, proposed level and is part of a long-term plan to end federal capitalization of the program in fiscal year (FY) 2011. NACWA and other national, state and local groups continue to oppose the cuts.

The House included in the *Department of the Interior, Environment, and Related Agencies Appropriations Act of 2007* (H.R. 5386) \$1 million to continue the National Biosolids Partnership (NBP) environmental management system (EMS) for biosolids program. The Senate, however, as in years past, did not include funding for the EMS program. NACWA does anticipate, however, that the Senate will accede to the House request and keep the NBP funding in the final conferenced version of the bill. Other programs receiving funding in EPA's budget include \$841.5 million for EPA's drinking water state revolving fund (DWSRF) and \$2 million for the Water ISAC. The House bill contains \$200 million for 146 targeted infrastructure grants that primarily fund individual water infrastructure projects in members' districts. The Senate Appropriations Committee measure contains \$210 million for 195 individual projects. Although the House bill eliminated a \$1.182 million line item for wastewater operator training grants, the Senate Appropriations Committee added \$1 million to EPA's budget to continue the program. The full Senate must still vote on the spending bill in November, before it can go to a conference committee where differences between the House and Senate versions will be resolved.

Source: http://www.nacwa.org/private/legreg/legupdate/leg_tracker.cfm

Exemption for POTWs from Chemical Security Rules

House and Senate appropriators voted September 29 to give the Department of Homeland Security (DHS) the authority it has long sought to regulate security at the nation's chemical facilities in the fiscal year 2007 spending bill, capping weeks of negotiations between the White House, industry and lawmakers. Language was included for an exemption from the costly new rules for POTWs based upon the fact that the Environmental Protection Agency (EPA) has jurisdiction over wastewater security.

Source: NACWA.org

Great Lakes Fish and Wildlife Bill Signed Into Law

Legislation authorizing \$16 million in grants and projects to restore fish and wildlife in the Great Lakes was signed into law Oct. 12. The Great Lakes Fish and Wildlife Restoration Act of 2006 (S. 2430) authorizes \$12 million for the U.S. Fish and Wildlife Service to award grants and another \$4 million for the agency to conduct regional fish and wildlife projects. The measure reauthorizes legislation first enacted in 1990 and subsequently reauthorized in 1998 to manage, protect, and restore the region's fish and wildlife.

Source: Environment Reporter, BNA, Inc., Oct. 20, 2006.

B. Judicial And Enforcement

1. Water

Court Rules in Favor of POTW in Key Biosolids Case

A federal court rejected a request from Kern County, Calif., to dismiss a lawsuit by the city of Los Angeles, Orange County Sanitation Districts, and the Sanitation Districts of Los Angeles County, all NACWA members, challenging the county's ban on the land application of biosolids. The U.S. District Court for the Central District of California ruled that the city and its co-plaintiffs were entitled to bring the suit in Los Angeles because the affects of the Kern County ban would be felt by government agencies in the Los Angeles area, thus ending attempts by Kern County to move the case to a different federal court district in Fresno. The court also ruled that the city may proceed on two federal constitutional challenges and two state law challenges in an effort to overturn the ban, which was approved by Kern County voters in June 2006 and is scheduled to take effect in early 2007. The ruling clears the way for a motion by the city and its allies asking the court to stay the ban and allow land application of biosolids to continue while the case is heard.

Source: <http://www.nacwa.org/private/cwc/20061027.cfm#2>

Dallas to Pay \$3.5 Million to Resolve Stormwater Claims

The city of Dallas will spend more than \$3.5 million to resolve allegations of improperly operating and funding the municipal stormwater management system in violation of the Clean Water Act, the Department of Justice and the Environmental Protection Agency announced May 10 (*United States v. City of Dallas*, N.D. Texas, No. 3:06-cv-0845-B, *consent agreement filed 5/10/06*). The agreement requires the city to pay an \$800,000 civil penalty and \$1.2 million for two supplemental environmental projects that will benefit the community. The remaining \$1.5 million will be used to hire additional personnel to staff the municipal stormwater management program over the next three years. The city will construct two wetlands. The consent decree requires the city to have at least 36 employees in its stormwater management section. The staff will be required to inspect at least 500 stormwater discharge pipes each year, 500 industrial facilities each year, and large construction sites every two weeks, according to the consent order. The city also will be required to prepare a formal environmental management system for 12 municipal facilities, including the city's service center. The

agreement will require a third-party auditor to review the management system. The EPA will conduct a full audit of the stormwater system within the next one to three years.

Source: Environment Reporter, BNA, Inc., May 12, 2006.

Developer to Pay \$130,000 to Settle Stormwater Violations

A suburban Philadelphia residential developer will pay the United States \$130,000 to settle alleged violations of regulations aimed at reducing polluted stormwater runoff from construction sites. Violations documented during site inspections from September 2003 to June 2005 included failure to install proper erosion controls and sediment basins, failure to divert stormwater runoff, inadequate installation and maintenance of silt fences, soil disturbance beyond the limits, and removal of controls before soil stabilization. Violations documented in 2005 at another site included failure to complete in a timely fashion the sediment basin, sediment trap, and diversion channels; inadequate maintenance of the sediment basin, diversion channel, and silt fencing; and inadequate stabilization of sediment trap and stockpiles. In the third settlement a developer will pay a \$25,000 penalty to settle alleged violations at a 50-acre housing development. Violations cited during site inspections in November 2004 included inadequate erosion controls, inadequate maintenance of construction entrances, lack of silt fencing around stockpiles, and unavailable inspection reports.

Source: Environment Reporter, BNA, Inc., May 12, 2006.

Hartford Metropolitan District Fined \$850,000 For Illegal Sewage Discharges

A major settlement involving federal and state regulators and the Hartford-based Metropolitan District (MDC) seeks to significantly reduce illegal discharges of raw sewage into the environment throughout the Hartford, Conn., area from the MDC's wastewater collection system. Under terms of the settlement, the MDC will significantly reduce illegal raw sewage overflows from the sanitary portions of their wastewater collection system. The MDC also will pay a fine of \$850,000. The fine will be split equally between the federal government and the state. EPA's investigations had documented that the MDC had discharged over 120 million gallons of untreated sewage from eight unpermitted structural SSO locations in the separate portions of Hartford's wastewater collection systems over the past five years. The discharges occurred primarily during wet-weather when the capacity of the separate collection systems was exceeded by groundwater and rain water that were discharged to these separate systems by individual residences through the connection of sump pumps, roof leaders, foundation, yard and area drains. Blockages in the collection systems have also resulted in dry-weather raw sewage overflows in all of the MDC's member communities. Under the Agreement, the MDC will implement a comprehensive, system-wide plan to ensure that all sanitary sewer overflows (SSOs) that are associated with insufficient capacity of the MDC's separate wastewater collection system are eliminated within 7 to 12 years. The CTDEP's discharge permits for these wastewater treatment facilities do not authorize any SSOs.

Source: EPA Press Release May 11, 2006.

<http://yosemite.epa.gov/opa/admpress.nsf/1367c4195702d16a85257018004c771c/2a14e8ade34e97548525716b00674482!OpenDocument>

Two Internet Sites Help Small Utilities Meet Drinking Water Monitoring

Requirements

The Environmental Protection Agency released two Internet-based products to help small drinking water utilities comply with monitoring requirements and prepare water compliance samples under the Safe Drinking Water Act. One is a "Rule Wizard" website that provides a complete list of federal monitoring requirements for systems that use groundwater and serve fewer than 3,300 people. The second site is the Interactive Sampling Guide. The CD ROM, which also includes case studies, will help public water system owners and operators work with state and local agencies when contaminants are detected. The new tools will be especially useful for compliance with the 2001 Arsenic Rule (40 C.F.R. §§ 9, 141, and 142) and an upcoming Groundwater Rule.

EPA's Internet-based tools for small drinking water utilities, Launch the RuleWizard is available at <http://www.RuleWizard.org> and Interactive Sampling Guide at <http://www.epa.gov/safewater/smallsys/samplingcd.html>.

Source: Environment Reporter, BNA, Inc., May 12, 2006.

C. Regulatory

1. Water

2006 - 2011 EPA Strategic Plan

EPA submitted the Agency's *2006 - 2011 Strategic Plan* to Congress on September 29, 2006 as required under the Government Performance and Results Act (GPRA) of 1993. This revised *Strategic Plan* maintains the five goals that were described in the *2003 - 2008 Strategic Plan*, but reflects a sharpened focus on achieving more measurable environmental results. The five goals are Clean Air and Global Climate Change, Clean and Safe Water, Land Preservation and Restoration, Healthy Communities and Ecosystems, and Compliance and Environmental Stewardship. The *Strategic Plan* serves as the Agency's road map and guides us in establishing the annual goals we need to meet along the way.

The Plan's "Clean and Safe Water" goal defines the improvements that EPA expects to see in the quality of the nation's drinking water and of surface waters over the next 5 years. These goals include improving compliance with drinking water standards, maintaining safe water quality at public beaches, restoring more than 2,000 polluted water bodies, and improving the health of coastal waters.

Three key strategies will drive progress toward these clean and safe water goals:

- **Core Programs:** Continue effective implementation of core national water programs, giving priority to improving water quality monitoring and information management, as well as working with state partners to strengthen water quality standards, improve discharge permits, and reduce pollution from diffuse or "nonpoint" sources.
- **Water Infrastructure:** Help sustain and secure the network of pipes and treatment facilities that constitute the nation's water infrastructure
- **Watershed Restoration and Protection:** Apply a watershed approach to restoring polluted waters across the country, including developing Total Maximum Daily Loads, implementing clean-up plans on a watershed basis, and promoting innovative, cost-effective practices like water quality trading and watershed permitting to restore and protect water quality.

Hot Regulatory Topics From WEFTEC 2006

Recent Court Cases Which May Impact Permittees or Federal Water Policy -- If you would like a copy of the handout Libby prepared to support her talk at WEFTEC on this topic at WEFTEC, please send her an e-mail at lford@nixonpeabody.com.

Peak Wet Weather -- Jim Hanlon, director of the EPA Office of Wastewater Management discussed the status of EPA's soon to be issued peak wet weather flow policy. The policy has been at the White House Office of Management and Budget for three months, it should be released in final form within six weeks. In connection with this, WEF has published its new electronic publication, *Guide to Managing Peak Wet Weather Flows in Municipal Wastewater Collection and Treatment Systems*. Developed under a Water Quality Cooperative Agreement between WEF and the U.S. Environmental Protection Agency, the 117-page document is designed to help owners, planners, designers, and operators of wastewater collection and treatment systems improve and maximize performance during peak wet weather events. Publicly owned treatment works - often faced with a limited ability to control highly variable wet weather flows - must propose alternatives, assess impacts, and proactively communicate with regulators and the community during wet weather events. To help address these issues, WEF's guide provides a method for POTWs to be more proactive in planning for these events and outlines a process that can be used to build support for real-world solutions to improve overall water quality. In addition, the guide supports implementation of EPA's proposed Peak Wet Weather Discharge Policy. A copy of this Guidance can be downloaded (for a minimal fee) at: http://www.e-wef.org/timssnet/products/tnt_showprdsplash.cfm

“Daily” TMDL Court Decision – Jim Hanlon of EPA also discussed guidance EPA is developing to respond to the April 25 decision on TMDLs², which he expects will be out in a few weeks.

Emerging Contaminants -- Ephraim King, the director of science and technology in the EPA Office of Water discussed the need to get a better handle on the potential effects of emerging contaminants and the next generation of recreational water quality criteria.

Drinking Water Quality -- Ground Water Rule (GWR)

The GWR was signed on October 11, 2006. The purpose of the rule is to reduce disease incidence associated with disease-causing microorganisms in drinking water. The rule establishes a risk-based approach to target ground water systems that are vulnerable to fecal contamination. Ground water systems that are identified as being at risk of fecal contamination must take corrective action to reduce potential illness from exposure to microbial pathogens. The rule will apply to all systems that use ground water as a source of drinking water. The purpose of the rule is to reduce disease incidence associated with disease-causing microorganisms in drinking water. The rule establishes a risk-based approach to target ground water systems that are vulnerable to fecal contamination. Ground water systems that are identified as being at risk of fecal contamination must take corrective action to reduce potential illness from exposure to microbial pathogens. The rule will apply to all systems that use ground

water as a source of drinking water. A prepublication copy of the Final Rule can be found at http://www.epa.gov/safewater/disinfection/gwr/pdfs/prefr_gwr.pdf.

Source: <http://www.epa.gov/ocfo/plan/plan.htm>

EPA Propose To Exempt Most Water Transfers From NPDES Permitting Requirements

In 2004, the question of whether NPDES permits were necessary for water transfers was presented before the Supreme Court in *South Florida Water Management District v. Miccosukee Tribe of Indians*. The Court declined to rule directly on the issue and remanded it back to the District Court for further deliberation. On August 5, 2005, EPA issued a legal memorandum entitled "Agency Interpretation on Applicability of Section 402 of the Clean Water Act to Water Transfers." This memo confirmed EPA's interpretation that Congress intended for water transfers to be subject to oversight by water resource management agencies and State non-NPDES authorities, rather than the NPDES permitting program. On June 7, 2006, EPA published a proposed rule entitled "NPDES Water Transfers Proposed Rule". The comment period ended on August 7, 2006. Through the rule EPA proposes to exclude water transfers from regulation under the NPDES permitting program. The proposed rule would define a water transfer as an activity that conveys waters of the United States to another water of the United States without subjecting the water to intervening industrial, municipal, or commercial use. This exclusion would not apply to pollutants that the water transfer itself may introduce to the water being transferred.

Source: http://cfpub.epa.gov/npdes/home.cfm?program_id=41#water_transfer

National Menu Of Stormwater Best Management Practices

EPA has renamed, reorganized, updated, and enhanced its National Menu of Best Management Practices for Stormwater Phase II website. These revisions include the addition of new fact sheets and revisions of existing fact sheets. The Menu of BMPs is based on the Stormwater Phase II Rule's six minimum control measures.

Source: <http://cfpub.epa.gov/npdes/stormwater/menuofbmps/index.cfm>

EPA Releases Status Reports on each of the Great Lakes

EPA has released biennial status reports on each of the five Great Lakes. The reports are comprehensive environmental management plans that provide details on the steps needed to ensure protection, restoration, and environmental maintenance of Lakes Superior, Michigan, Huron, Erie and Ontario. The lake-wide plans are a requirement of the Great Lakes Water Quality Agreement between the United States and Canada to restore and maintain the chemical, physical and biological integrity of the Great Lakes. All of the plans, except for Lake Michigan which is entirely in the United States, were developed with Environment Canada. The plans outline the environmental status of each lake, highlight successes, identify problems, and propose solutions. The reports also include priorities for projects and programs that will advance some of the recommendations of the Great Lakes Regional Collaboration Strategy, developed by stakeholders under a 2005 presidential executive order. The plans are available at <http://www.epa.gov/glnpo/gl2000/lamps/index.html>

Source: WEF's Week in Washington, May 5, 2006.

EPA Unveils First-Ever Assessment of U.S. Wadeable Streams

What's the state of the union's streams? EPA set out to answer that question in a multiyear study of wadeable streams across the country released on May 5, *Wadeable Streams Assessment* (WSA), is the first consistent evaluation of the streams that feed rivers, lakes, and coastal waters. "Wadeable streams" are those which are shallow enough to be adequately sampled without a boat. They are essential natural resources that have been under-sampled in the past. Conducted between 2000 and 2004, the study was based on sampling at 1,392 sites selected to represent the condition of all streams that share similar ecological characteristics in various regions. The survey found that stream conditions vary widely across the diverse ecological regions of the country, and that streams in the West were in the best condition. Humans, the researchers found, have a significant impact on wadeable streams. A majority of streams showed evidence of human influence along the streams, such as dams, pavement and pastures. The WSA measured key chemical and physical indicators that reveal stress, or degradation of streams. The most widespread stressors observed are nitrogen, phosphorus, and streambed sediments, which smother aquatic habitat and degrade conditions for fish. Nitrogen and phosphorus are nutrients that can increase the growth of algae, decrease levels of dissolved oxygen and cloud the water. To view the Wadeable Streams Assessment, visit: <http://www.epa.gov/owow/streamsurvey>.

Source: WEF's Week in Washington

GAO Issues Report on Status of Wastewater Security Measures

The Government Accountability Office (GAO) issued a report on May 1 evaluating security measures wastewater utilities have implemented since the terrorist attacks on 9/11. GAO surveyed over 200 large wastewater utilities, most of which indicated that they have completed some type of security assessment. Utilities indicated that most security improvements undertaken since 9/11 have focused on controlling access to treatment plants, while less effort has been directed toward securing collection systems due to technical complexities and costs. Drinking water utilities were required to conduct vulnerability assessments under the 2002 Bioterrorism Act, but wastewater utilities were not. A copy of the GAO report is available at <http://www.gao.gov/new.items/d06390.pdf>. (PS)

Source: WEF's Week in Washington

EPA Issues Data on Macroinvertebrate Tolerances

Information to help water quality experts estimate the levels of pollutants that could harm aquatic organisms was released by the Environmental Protection Agency June 8. EPA released *Estimation and Application of Macroinvertebrate Tolerance Values*, which is a technical review of statistical methods for estimating macroinvertebrate tolerance values from field data. Tolerance values measure the sensitivity of aquatic organisms to manmade disturbances and are used to assess the biological condition of streams and rivers. The document also reviews different methods for applying tolerance values for assessing biological conditions of streams and rivers and for diagnosing the causes of impairment. Macroinvertebrates are animals without backbones that are large enough to be seen by the unaided eye.

Source: Environmental Reporter BNA, Inc.

Estimation and Application of Macroinvertebrate Tolerance Values can be downloaded from <http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=154869>.

Rule on Electroplating Sludge Withdrawn

The Environmental Protection Agency has withdrawn a draft proposed rule that would have allowed for the recycling of a certain class of electroplating sludge, known as F006 waste, and is considering rolling the proposal into a broader rule with other industrial recycling operations. The proposal was to exempt recycled electroplating sludge containing a high percentage of recoverable metals from hazardous waste management requirements under the Resource Conservation and Recovery Act and thereby reduce the costs of recycling. Under the proposed solid waste definition rule that has been in development for more than a decade, the definition would be revised to exclude 1.5 million tons of hazardous waste annually from regulation under RCRA. Such waste includes certain spent materials, byproducts, and sludges listed as hazardous that are "generated and reclaimed in a continuous process within the same industry." The proposed rule, issued in October 2003, also included a broader option that would allow the recycling of these materials in industries other than those that generated them. EPA has agreed to an OMB recommendation to finalize the solid waste definition rule by November or to repropose all or portions of it.

Source: Environment Reporter, BNA, Inc., May 19, 2006.

States Question Whether Funds Intended For Their Use Should Pay for EPA Initiative

State officials are questioning whether the Environmental Protection Agency can legally use federal dollars dedicated for states and interstate water quality programs to fund an agency initiative rewarding states that charge fees to process clean water permits. EPA was directed by the White House Office of Management and Budget in February to issue a rule by Dec. 31 that would reward states with more Section 106 funds if they begin charging "adequate" fees or improve their existing free structures for processing National Pollutant Discharge Elimination System permits. The rule, once adopted, would allow states to increase their revenue to administer the NPDES program and free up federal funds.

Source: Environment Reporter, BNA, Inc. 09/09/06.

EPA Guidance Sets Water Quality Priorities For States Using Federal Grant Funding

Draft Environmental Protection Agency guidance urges states and multistate agencies that address pollution and water resources issues to use federal grants on projects that are most likely to result in measurable water quality improvements. The *Interim Guidance to States and Interstates on Use of Clean Water Act Section 106 Grant Funds for FY 07 and Out-Years* is intended to ensure that funds allocated under Section 106 of the Clean Water Act be used for projects that are "most likely" to improve water quality through clearly defined and measurable results, according to EPA. The 15-page document outlines a "hierarchy" of water quality goals that states should strive for.

EPA's draft Interim Guidance to States and Interstates on Use of Clean Water Act Section 106 Grant Funds for FY 07 and Out-Years is available at <http://www.epa.gov/owm/cwfinance/pollutioncontrol.htm>.

Source: Environment Reporter, BNA, Inc. 09/08/06.

Hawaii DOT to Pay \$52 Million to Settle Stormwater Violations

In one of the nation's largest stormwater violation settlements, the Hawaii DOT last year agreed to pay \$52 million as part of a consent decree with the federal Environmental Protection Agency and the state Department of Health. That agreement included a \$1 million fine, another \$1 million for a program to assess its environmental responsibilities, and \$50 million over five years to resolve violations of the federal Clean Water Act at highways and airports. EPA and state Health Department inspectors found that storm-drain violations in the state between 1999 and 2002 had polluted Island reefs. Their report found that Hawaii was "significantly behind other state and local governments in meeting national and state stormwater requirements."

Source: 23 September 2006 Honolulu Advertiser

EPA Fact Sheet on Wastewater Treatment Energy Conservation

A new Environmental Protection Agency fact sheet outlines steps wastewater treatment plants can take to conserve energy during treatment processes. The purpose of the fact sheet, *Energy Conservation*, is to assist municipal and utility managers and operators in developing approaches to reduce energy consumption at wastewater treatment plants. The fact sheet also includes information on ways to produce energy on-site by using solar cells, microturbines, fuel cells, and effective use of bio-gas that can be produced in biosolids processing.

Source: Environment Reporter, BNA, Inc. 9/22/06. EPA's fact sheet for wastewater utilities on Energy Conservation is available at <http://epa.gov/owm/mtb/mtbfact.htm>

NACWA Issues Handbook on Managing Sludge

The National Association of Clean Water Agencies has developed a handbook for wastewater treatment agency managers and staff to manage biosolids, the organic matter removed from wastewater during treatment. The 96-page handbook, *Biosolids Management: Options, Opportunities & Challenges*, gives a regulatory, legislative, and legal overview of biosolids management practices.

Source: Environment Reporter, BNA, Inc., 9/22/06. The handbook may be purchased at <http://www.nacwa.org/pubs/index.cfm>.

EPA tells Congress it will Accelerate Work on Endocrine Disruptors

The Assistant Administrator for Water at the U.S. Environmental Protection Agency told the House Committee on Government Reform that EPA will speed up work on its program to control endocrine disruptors. The hearing was called in response to the recent U.S. Geological Survey report finding that male fish reproductive organs contain eggs in the Potomac River. At the hearing, EPA was criticized for moving too slowly to address emerging or unregulated contaminants, pharmaceuticals, and endocrine disruptors that are being found in the country's water bodies. When asked to rate the urgency of the problem on a scale from 1 to 10, Grumbles said it was an 8 and acknowledged that the Potomac River fish are a sign EPA is not acting fast enough. Testimony from Grumbles and other witnesses are available at <http://reform.house.gov/GovReform/News/DocumentSingle.aspx?DocumentID=51221>.

Source: This Week in Washington 10/06/06.

USDA and EPA Sign Water Quality Credit Trading Agreement

The USDA Natural Resources and Environment Under Secretary and Assistant Administrator of the U.S. Environmental Protection Agency's Office of Water, have signed a partnership agreement to establish and promote water quality credit trading markets through cooperative conservation. The agreement features a pilot project within the Chesapeake Bay basin to showcase the effectiveness of environmental markets.

More information on the market based approach and the NRCS strategic plan:

<http://www.nrcs.usda.gov/about/strategicplan/>

Water Quality Trading Agreement and more information about water quality trading:

<http://www.epa.gov/waterqualitytrading>

<http://www.epa.gov/mailto:public-access@epamail.epa.gov>

Source: EPA Newsroom 10/13/06. Contact Information: EPA Contact: Dale Kemery (202) 564-4355 / kemery.dale@epa.gov USDA Contact: Peter Fullerton (202) 720-1163

Guide to Disposing of Drinking Water Treatment Plant Waste

A new guide to help drinking water treatment plants properly dispose of their solid waste by-products is now available from the U.S. Environmental Protection Agency (EPA). The eight-page guide gives step-by-step recommendations on identifying whether solid waste is hazardous, determining the regulatory status (based on size) of a treatment plant that produces waste, and waste disposal options. It also provides EPA references and websites to learn more about federal regulations regarding solid waste disposal under the Resource Conservation and Recovery Act. .

Source: WEF's This Week in Washington 10/20/06. To view the guide, visit:

http://www.epa.gov/safewater/arsenic/pdfs/guide_arsenic_disposalhazardous-nonhazardous.pdf