U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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May 6, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Subcommittee on Water Resources and Environment Staff

SUBJECT: Subcommittee on Water Resources and Environment Markup of H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act"; H.R. 135, the "Twenty-First Century Water Commission Act of 2007"; H.R. 5570, to provide for a study by the National Academy of Sciences of potential impacts of climate change on water resources and water quality; and H. Res. 1137, supporting the goals and ideals of National Public Works Week.

PURPOSE OF MARKUP

On Wednesday, May 7, 2008, at 2:00 p.m., in Room 2167 Rayburn House Office Building, the Subcommittee on Water Resources and Environment is scheduled to mark up H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act"; H.R. 135, the "Twenty-First Century Water Commission Act of 2007"; H.R. 5570, to provide for a study by the National Academy of Sciences of potential impacts of climate change on water resources and water quality; and H. Res. 1137, supporting the goals and ideals of National Public Works Week.

H.R. 2452, THE "RAW SEWAGE OVERFLOW COMMUNITY RIGHT-TO-KNOW ACT"

Background

Sewer overflows, whether from combined sewer systems or sanitary sewer systems, can pose significant environmental impacts, as well as cause or contribute to human health impacts.

States have identified combined sewer overflows ("CSOs") and sanitary sewer overflows ("SSOs") as the direct or a contributing cause of documented environmental impacts, including aquatic life impairments, fish kills, and shellfish bed closures. In addition, CSOs and SSOs often contain toxic and other pollutants, including microbial pathogens (e.g., bacteria, viruses, and parasites) that cause or contribute to human health impacts, such as vomiting, diarrhea, respiratory infections, fever, and, in rare cases, death. Although the potential for human exposure can come in many forms, the Environmental Protection Agency ("EPA") and public drinking water agencies have expressed specific concern about the potential for direct contamination of public drinking water sources from sewer overflows.

The most reliable way to prevent human illness from waterborne diseases and pathogens is to eliminate the potential for human exposure to the discharge of pollutants from CSOs and SSOs. This can occur either through the elimination of the discharge, or, in the event that a release does occur, to minimize the potential human contact to pollutants. Currently, Federal law does not provide uniform, national standards for public notification of combined and sanitary sewer overflows. Public notification of sewer overflows is governed by a variety of Federal regulations, state laws, and local initiatives aimed at limiting human exposure to discharges.

Over the past decade, EPA has taken several administrative steps to encourage local governmental agencies, including sewerage agencies, to report sewer overflows to Federal and State agencies and the public.

In April 1994, EPA issued the Combined Sewer Overflow Control Policy – a national framework for control of CSOs through the Clean Water Act's permitting program. This policy requires owners and operators of combined sewer systems to implement minimum technology-based controls (the "nine minimum controls") that can reduce the prevalence and impacts of CSOs without significant engineering studies or major construction. These controls include a requirement for the public disclosure of CSOs. The policy does not require any particular methodology for notification, but identifies potential methods, including posting appropriate notices in affected use areas or public places, newspaper, radio, or television news programs, and direct mail contact for affected residents. The requirements of the control policy are limited to CSOs.[1]

For SSOs, there is no Federal requirement for public notification. However, in January 2001, EPA issued a proposed rule regarding SSOs that, among other issues, would have

[1] In 2001, the Clean Water Act was amended to require that permits for combined sewer systems conform to the Combined Sewer Overflow Control Policy. Section 402(q) of the Clean Water Act requires that each permit issued for a discharge from a municipal combined sewer system conform to the Combined Sewer Overflow Control Policy. This provision was included as part of the Consolidated Appropriations Act, 2001 (Pub. L. 106-554).

implemented a program for reporting, public notification, and recordkeeping for sanitary sewer systems and SSOs. The proposed rule would have required owners and operators of sanitary sewer systems to develop an overflow emergency plan describing how the owner/operator would immediately notify the public, public health agencies, and other similar entities (e.g., drinking water suppliers and beach monitoring authorities), of overflows that may imminently and substantially endanger human health.

In addition, the proposed SSO rule would have required owners/operators to provide the appropriate Federal or state agencies with information on the magnitude, duration, and suspected cause of the overflow, as well as actions necessary to avoid future overflows. EPA's proposed SSO rule was subsequently withdrawn. EPA has not issued any additional regulatory proposals for public notification of SSOs.

H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act"

On May 23, 2007, Representative Timothy H. Bishop introduced H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act". This legislation amends the Clean Water Act, to provide a uniform, national standard for public notification of both combined sewer overflows and sanitary sewer overflows.

H.R. 2452 requires owners and operators of publicly owned treatment works to provide timely notification to Federal and state agencies, public health officials, and the public of sewer overflows. Specifically, this legislation requires municipalities, as part of their Clean Water permit, to develop and implement methodologies or technologies to alert the treatment works in the event of a sewer overflow, to notify the public in any area where the overflow has the potential to affect public health, to immediately notify public health authorities and other affected entities (including public water systems) of overflows that may imminently and substantially endanger human health, and to provide the appropriate Federal and state agencies with information on the magnitude, duration, and suspected cause of the overflow, as well as actions necessary to avoid future overflows.

Finally, this legislation authorizes funds from the Clean Water State Revolving Fund to be used to monitor, report, and notify the public of combined and sanitary sewer overflows.

Prior Legislative and Oversight Activities

On October 16, 2007, the Subcommittee on Water Resources and Environment held a hearing on the "Raw Sewage Overflow Community Right-to-Know Act" in which representatives from the Environmental Protection Agency, State and local governmental officials, public health officials, and other stakeholders testified on the issue of public notification of sewer overflow.

On May 23, 2007, Representative Timothy H. Bishop introduced H.R. 2452, the "Raw Sewage Overflow Community Right-to-Know Act". In the 109th Congress, a similar bill (H.R. 1720) was introduced, but no action was taken on that legislation.

Amendments

During Subcommittee consideration of the bill, an amendment in the nature of a substitute will be offered by Chairwoman Eddie Bernice Johnson. The amendment makes several changes to the bill.

First, the amendment amends the short title of the bill to be the "Sewage Overflow Community Right-to-Know Act". Second, the amendment strikes section 2 of the introduced bill that included legislative findings. Third, the amendment makes technical changes to the definitions for "sanitary sewer overflow" and "sewer overflow", strikes the definition of "combined sewer overflow", and adds a definition of "treatment works". Fourth, the amendment modifies the requirements for monitoring, reporting, and public notification of sewer overflows by: (1) adding "feasible" and "timely" considerations for implementation of approved monitoring methodologies, technologies, and management programs; (2) consolidates the notification requirements for sewer overflows; (3) creates a narrow exemption for public notification of sewer basement backups; and (4) creates a new section directing the Environmental Protection Agency to conduct a formal rulemaking to define the terms "feasible", "timely", "potential to affect public health", and "imminently and substantially endanger public health". Finally, the amendment adds a new section entitled "Limitation on Statutory Construction".

Specific information on other amendments is not available at this time.

H.R. 135, THE "TWENTY-FIRST CENTURY WATER COMMISSION ACT OF 2007"

Background

The United States is a nation blessed with abundant water resources across much of the landscape. In addition, investment in water infrastructure has helped provide reliable water resources for the more arid regions, as well as those with less reliable water supplies. The nation's waters support myriad human uses and needs, power generation, navigation, and industry while also providing for a globally diverse freshwater ecosystem.

The water resources of the United States are not evenly distributed across the country resulting in very different water resource management strategies. Historically, areas such as the northeast have relatively abundant water resources requiring mostly flood protection, while the west and southwest, in particular, are quite dry necessitating greater water supply infrastructure.

These widely diverse conditions around the United States are all managed differently and often independently of other projects. There are many Federal and state agencies with management responsibilities in addition to the very different water laws of the various States. As a result, projects often reflect local operational needs with little consideration of effects of such projects on the surrounding watersheds. In addition, there have been increased demands for water resources, in part due to increased population and an increased recognition of the need to reserve water for aquatic ecosystems, as well as consumptive uses. These different operations and conditions are resulting in greater conflict over water resources and are potentially subject to changing climactic conditions.

Since the 1950s there have been at least seven different commissions empanelled to examine Federal water policy. The last review of water policy was the Western Water Policy Advisory Review Commission which was authorized in 1992 and issued its report in 1998. There has not been a comprehensive review of Federal water policy since 1973. Given the current challenges that exist in a number of large watersheds, and the greater challenges to be faced with changes brought on by factors such as climate change, increasing and migrating population, and other competing uses, there needs to be a comprehensive review of national water policies, and an assessment that starts to review watershed needs and planning.

H.R. 135, the "Twenty-First Century Water Commission Act of 2007

H.R. 135, the "Twenty-First Century Water Commission Act of 2007," establishes a commission to provide for water assessments to project future water supply and demand, review current water management programs at each level of government, and develop recommendations for a comprehensive water strategy, and authorizes $9 million to carry out these functions. Modeled after the 1968 National Water Commission Act, the Twenty-First Century Water Commission would consist of nine non-Federal members, appointed by the President, the Speaker of the House, and the Majority Leader of the Senate.

Specifically, H.R. 135 requires that the recommendations developed by the Commission must: (1) respect the rights of States in regulating water rights and uses; (2) identify incentives to ensure a dependable water supply for the nation over the next 50 years; (3) suggest strategies to avoid unfunded mandates; (4) eliminate duplication among Federal agencies of jurisdiction; (5)

consider all available technologies; (6) make recommendations for capturing excess water and flood water for conservation and subsequent use in times of drought; (7) develop financing options for public works projects; and (8) suggest strategies to conserve existing water supplies and repairs to infrastructure. The Commission may consider other objectives related to the effective management of the water supply to ensure reliability, availability, and quality which the Commission considers appropriate.

The Commission would issue interim reports every six months and a final report within three years of the date of enactment. After issuing its final report, the Commission would cease to exist.

Prior Legislative and Oversight Activities

On January 4, 2007, Representative John Linder introduced H.R. 135, the "Twenty-First Century Water Commission Act of 2007". This bill (H.R. 135) has been introduced in two previous Congresses.

In the 108th Congress, the Subcommittee held a hearing on H.R. 135. On October 31, 2003, the Committee on Transportation and Infrastructure was discharged from further consideration of the bill. On November 21, 2003, the House passed the bill under suspension of the Rules.

In the 109th Congress, on April 12, 2005, the Committee the Committee was discharged from further consideration of H.R. 135, and the House passed the bill under suspension of the Rules by a vote of 402-22.

The Senate did not take any action on H.R. 135 in the 108th or 109th Congress.

In the 110th Congress, on November 8, 2007, the Subcommittee held a hearing on H.R. 135.

Amendments

Chairwoman Eddie Bernice Johnson will offer an amendment in the nature of a substitute to the bill.

The amendment makes several changes to H.R. 135. These changes include specific direction to the Commission to consider impacts of climate change and climate change science in the review and recommendations. The amendment also changes the composition of the Commission to eleven members with three appointed by the President, three by the Speaker of the House, one by Minority Leader of the House, three by Majority Leader of the Senate, and one by the Minority Leader of the Senate. The amendment also directs that the Director of the Commission be appointed by the Chairperson of the Commission. Finally, the amendment extends the duration of the Commission to five years and increases the authorization of appropriations to $12 million for the Commission to complete its duties.

Specific information on other amendments is not available at this time.

H.R. 5770, TO PROVIDE FOR A STUDY BY THE NATIONAL ACADEMY OF SCIENCES OF POTENTIAL IMPACTS OF CLIMATE CHANGE ON WATER RESOURCES AND WATER QUALITY

Background

In February 2007, the Intergovernmental Panel on Climate Change ("IPCC") declared that evidence of atmospheric warming is "unequivocal". The IPCC also stated with "very high confidence" that human activities have resulted in global warming. The results of this warming may result – and to a degree may already be resulting – in sea level rise, increased hurricane and storm activity, and changed precipitation patterns resulting in more frequent floods and droughts, among other impacts.[2]

In its draft *National Water Program Strategy: Response to Climate Change*, the U.S. Environmental Protection Agency's ("EPA") Office of Water indicates that warmer air temperatures will result in warmer water. The impacts of warmer water include declining levels of dissolved oxygen, increased incidences of hypoxia (low oxygen levels result in harm or death of aquatic species), more harmful algal blooms, and changed toxicity of some pollutants. In sum, EPA finds that even if pollution levels remain stable, the number of waters recognized as "impaired" is likely to increase.

In March 2007, EPA's Office of Water established an internal climate change workgroup in coordination with other EPA Offices and Regions to better define the water-related consequences of climate change and build understanding of how the clean water, drinking water, and ocean programs may need to be tailored in light of climate changes. In March 2008, EPA released for public comment a draft water program strategy on climate change mitigation, adaptation, and research. EPA is accepting comments on the draft strategy until May 27.

H.R. 5770, to provide for a study by the National Academy of Sciences of potential impacts of climate change on water resources and water quality

H.R. 5770 directs EPA to enter into an arrangement with the National Academy of Sciences to convene a high-level panel to study the potential impacts of global climate change to Federal Water Pollution Control Act ("Clean Water Act") programs. Climate change may impact water quality, quantity, and infrastructure. In turn, these impacts may affect EPA's ability to ensure progress under statutes like the Clean Water Act.

H.R. 5770 calls for the National Academy of Sciences to prepare a two-part study. The first study would consist of an analysis of the impacts of climate change on hydrology and water quality, including an identification of regional variation of precipitation events that will impact watersheds, water resources, and water quality. The second part would assess the effects of climate change on implementation of the Clean Water Act, as well as an identification of and response actions to meet the requirements of the Clean Water Act. This study will enable EPA to develop and, if necessary, modify policies to effectively respond to climate change impacts on the nation's aquatic resources.

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[2]The IPCC defines climate change as "any change in climate over time, whether due to natural variability or as a result of human activity."

A report of the findings of this study must be submitted to the House Committee on Transportation and Infrastructure, and the Senate Committee on Environment and Public Works two years after the date of enactment.

H.R. 5770 authorizes $1.5 million for this study.

Prior Legislative and Oversight Activities

On May 11, 2007, the Committee on Transportation and Infrastructure held a hearing on "Administration Proposals on Climate Change and Energy Independence" On May 16, 2007, the Committee on Transportation and Infrastructure held a hearing on "Climate Change and Energy Independence: Transportation and Infrastructure Issues."

On June 13, 2007, Chairman Oberstar introduced H.R. 2701, the "Transportation Energy Security and Climate Change Mitigation Act of 2007." Section 704 of this Act included a similar study on the potential impacts of climate change on water resources and water quality. On June 20, 2007, the Committee held a markup of H.R. 2701, during which section 704 of H.R. 2701 was modified by a compromise amendment agreed to by Chairwoman Eddie Bernice Johnson, and Congressmen Richard Baker and Wayne Gilchrest. On June 20, 2007, H.R. 2701 was reported to the House by voice vote.

On July 30, 2007, Speaker of the House Nancy Pelosi introduced H.R. 3221, the "New Direction for Energy Independence, National Security, and Consumer Protection Act". This legislation incorporated section 704 of H.R. 2701, as reported by the Committee on Transportation and Infrastructure, as section 8703 of H.R. 3221. On August 4, 2007, the House approved H.R. 3221 by a vote of 241-172. Section 8703 of the bill was dropped during conference with the Senate.

On April 10, 2008, Representative John Hall introduced H.R. 5770. H.R. 5770 is modeled on the climate change study provision contained in H.R. 2701 and H.R. 3221.

Amendments

Specific information on amendments is not available at this time.

H. RES. 1137, SUPPORTING THE GOALS AND IDEALS OF NATIONAL PUBLIC WORKS WEEK

Background

Public works is loosely defined as projects or programs carried out by the federal or state government for the benefit of the community. The Committee on Transportation and Infrastructure has jurisdiction over several public works programs: transportation systems, including rail, highways, and public transit; water supply infrastructure; sewage and refuse disposal systems; public buildings; and other structures and facilities.

Public works infrastructure, facilities, and services provide safety, health, and economic assurances for both large and small populations. These services could not be provided in the efficient and effective method in which they are without the skill of public works professionals, such as engineers, administrators, and servicemen.

National Public Works Week is observed each year during May. Spearheaded by the American Public Works Association, the following groups are also cosponsoring efforts to increase awareness of the dedication of public works professionals during this week: American Council of Engineering Companies, American Society of Civil Engineers, American Shore & Beach Preservation Association, The Associated General Contractors of America, Association of Equipment Manufacturers, National Association of Clean Water Agencies, National Association of Water Companies, Society of Municipal Arborists, and the Water Environment Federation.

House Resolution 1137 recognizes the contribution of public works professionals to communities across the country by facilitating a resolution to recognize this year's National Public Works Week: May 18 through 24, 2008.

Prior Legislative and Oversight Activities

On May 15, 2007, the House passed H. Res. 352, supporting the goals and ideals of National Public Works Week, for the year 2007.

On April 23, 2008, Chairman Oberstar introduced H. Res. 1137.

Amendments

Specific information on amendments is not available at this time.