LIST OF CHANGES TO THE CLEAN WATER TRUST ACT

The 9/9/05 draft of the Clean Water Trust Act of 2005 contains the following changes from the 4/12/05 draft.

Findings and Purpose

- A new finding is added, supporting the revenue source (page 3, line. 1).

Title I. Establishment and Funding of the Clean Water Trust Fund

- A revenue source is included, consisting of reinstatement of the Environmental Income Tax and a tax on the sale of flushable products (page 6).

Title II. Amendments to the Federal Water Pollution Control Act.

- The language regarding septic systems or cesspools is revised to read "projects to correct failing residential septic systems or cesspools (in each case, as defined by the Administrator)" (page 11, line 5).
- A provision is added, drawn from the Duncan bill (H.R. 1560, section 303(f)), authorizing additional subsidization, under the SRF program, for projects that use green technology (page 14, line 20).
- A provision is added requiring that all funds (rather than just grants) be limited by the "no assistance for growth" language. Specifically, the Limitation on Assistance provision is deleted from the High Priority Partnership Grants program (page 10 of the 4/12/05 draft) and added to the section 205 Program Improvements provision, where it applies to both the SRF and grant programs (per CWA section 602(b)). Also, the provision has been slightly modified, to provide that the state must establish that it "will not provide financial assistance under this section if the project for which the assistance is provided will provide substantial direct benefits to new communities, new subdivisions, or newly developed urban areas" (page 16, line 14). This provision would be accompanied by an explanation for inclusion in the legislative history, which is attached.

Title III. Technology and Research

- The amounts authorized for the technology program are increased from $95 million/$20 million to $195 million/$50 million (page 21, line 5). Also, the Green Technology Set Aside language has been moved from a separate provision to a part of this authorization provision.
- The number of annual projects is increased from 10 to 20 (page 18, line 10).
- It is made clear that entities other than municipalities can participate. This is done by changing the initial reference from "municipalities" to "projects," and defining an eligible entity as a municipality, non-profit association representing wastewater utilities, or educational institution (page 20, line 21).
- The amount authorized for research is increased from $50 million to $100 million (page 25, line 2).
- The language in the new technology program, requiring the Administrator to ensure appropriate funding for small utilities, is revised to read "ensure, to the maximum extent practicable, funding for projects meeting the needs of utilities

that serve not more than 10,000 users and are located in a rural area" (page 20, line 13).

- A provision is added to the National Center for Utility Management that acknowledges the special problems of small rural communities (page 22, line 14).

Title IV. Fisheries and Wetlands

- A new program is included, to provide annual grants of $2 million to each state, for wetlands restoration (page 39).
- With respect to the Fisheries provisions, as a general matter, provisions are added that emphasize the use of watershed councils to develop watershed plans by clarifying the process for developing watershed plans, providing for greater community participation in the development of plans, and ensuring accountability.
- The language regarding both the advisory board (which advises the state regarding the overall program) and the watershed councils is amended to provide that those entities should represent "all" affected interests, including "scientific" and "technical" interests (board, page 26, line 6; councils, page 26, line 22).
- The list of specific entities that can convene a watershed council is deleted, so that the language only provides generally that a council may be convened "by a State or local governmental body" (page 26, line 17).
- A provision is added to require that a watershed council demonstrate that it has "authority to ensure proper administration of and accounting for grant funds provided under this section and for other public or private funds that it receives for purposes of implementing projects and measures in a plan" (page 27, line 7); a similar provision is added to the state program approval language (page 28, line 20).
- Language is added to the priority ranking provision, providing that "A priority ranking system shall be based primarily on the likelihood that recommended projects and measures will achieve significant progress toward protection or restoration of aquatic habitat or the enhancement of access for recreational fishing" (page 28, line 5).
- A provision is added to make clear that judicial review will be "under state law" (page 28, line 18).
- A provision is added, from the Bond-Lincoln bill, requiring the Administrator to find that the State has "the capability to implement the program" (page 29, line 6).
- A provision is added to provide for closer ongoing review of the overall program, by requiring an EPA review annually and an EPA report to Congress every three years (page 29, line 8 & 20).
- The provision requiring that watershed plans include an analysis of "protections for fishery habitat values" is amended to include "other aquatic habitat values" (page 301 line 1).
- A provision is added to make clear that projects and measures may not have "a significant adverse affect on the existing ecosystem and its functions" (page 33, line 16). This provision applies to, among other things, projects and measures to increase public access to fisheries resources.

- Provisions are added that require identification of TMDL programs (page 31, line 23) and that expressly require watershed plans to be consistent with TMDL programs (page 33, line 20).
- A provision is added that enhances the public notice and comment provisions (page 34, line 8).
- The period for reviewing plans is modified to focus on watershed plans rather than state programs and to shorten the review period from five to three years (page 35, line 12).
- Provisions are restored that limit administrative expenses (page 36, line 14).
- A provision is restored requiring that payments be pursuant to legally binding contracts or similar agreement (page 37, line 2).
- The provision authorizing payments for crop insurance premiums is deleted.
- A provision is added prohibiting the use of funds regarding the conversion of wetlands or other projects that would negatively affect the ecosystem (page 37, line 21).
- The funding formula is modified to delete the consideration of the amount of hydroelectric instream use (page 38, line 16).
- A provision is added to an earlier section of the bill, making tribes eligible to participate in the Fisheries program (page 13, line 13).
- Various structural and technical changes are made.

EXPLANATION OF THE LIMITATION ON THE PROVISION OF ASSISTANCE

The bill amends section 603(c) of the Clean Water Act, to clarify and expand the types of projects eligible for assistance, and adds a new provision to Title VI to authorize high priority partnership grants for particular types projects. In each case, the projects must meet the requirements of section 602(b) of current law, which requires that projects comply with various provisions of the Act. One such provision is section 211, which provides that a grant for a sewage collection system must be either for the replacement or major rehabilitation of an existing system (and necessary to the total integrity and performance of the system) or for a new system in existing community with sufficient existing or planned capacity (see also 40 C.F.R. 35.925-13, which prohibits funding for a new sewer system in a community that was in existence in 1972, unless the Administrator makes certain findings). The purpose of this prohibition is, in the words of the 1972 House Committee report, to assure that "sewage collection systems for new communities, new subdivisions, or newly developed urban areas, be addressed in the planning of such areas and be included as part of the development costs of the new construction in these areas."[1]

The proponents of the bill are concerned that, notwithstanding section 211 of current law, some financial assistance may have been provided in circumstances in which the assistance supports the development of new communities. To reaffirm and clarify the prohibition against doing so, the bill amends section 602(b) to provide that a state may not provide financial assistance if the project will provide substantial direct benefits to new communities, new subdivisions, or newly developed urban areas.

[1] H. Rep. 92-911, 92nd Cong., 2d Sess. 99 (1972).