

1/3/05

## Significant Changes to Water Assistance Trust and Environmental Restoration Act

In response to comments, several significant changes have been made from the 11/22/04 draft to the 12/29/04 draft. Technical and other minor changes also have been made.

### Generally

- The name of the bill is changed, from the “Clean and Safe Water Act” to the “Water Assistance Trust and Environmental Restoration (WATER) Act”. The trust fund is similarly re-named.
- A finding is added (number (7)) regarding the link between clean water and a beverage fee.

### Title I. Trust Fund

- The amount of funding is increased from \$9 billion/year to \$10 billion/year. The increase is attributable to an increase in funding for drinking water programs.
- The trust fund is taken off-budget.
- The beverage fee language is added. A 6.6 percent fee is estimated to raise \$5 billion a year, or \$25 billion over the five-year period. Additional and alternative revenue sources are being considered, including an alternative beverage fee that is assessed on each bottled beverage sold (e.g., five cents) and a clean and safe water restoration fee that applies to a broad range of activities.

### Title II. Amendments to the Clean Water Act

- The structure is changed, to clarify the relationship between eligibility under section 603 and the new grant program. Section 202 clarifies and expands eligibility. Section 203 then establishes the grant program.
- States may make grants for any project that is eligible under section 603, rather than only for a subset of such projects. In determining which projects will receive grants, the state must apply criteria set out in section 203(b).

- Section 203(b) also requires states to engage in a public process to select projects that will receive grants. This process is similar to that by which states develop intended use plans under the Safe Drinking Water Act.
- Two categories are added as eligible for financial assistance: extending sewer service to areas with failed septic systems and water quality monitoring. Three categories are deleted: implementing BMPs in TMDL waters (which is eligible under section 319 and the new Fisheries habitat program), pollution abatement from abandoned mines (which is better addressed through a separate program), and assistance for disadvantaged communities (which is unnecessary given the scope of the grant program, along with the addition of economic need as a criterion for determining which projects receive grants).
- Clarifications are made to several eligible activities: stormwater (“measures to control, treat, capture, or re-use municipal stormwater, including measures that provide treatment for or that minimize sewage or stormwater discharges using decentralized wastewater treatment, low-impact development practices, conservation easements, stream buffers, or wetlands restoration”), CSOs/SSOs (adding construction, collection systems, and monitoring), and water conservation (limiting eligibility to activities undertaken by public entities and adding “measures to enable customers to make more efficient use of treated water”). Other categories of activities that were proposed to be made eligible under the high priority grant program, such as nutrient removal, are presumed to be eligible under the general eligibility of POTWs.
- The amount of assistance available as grants is increased to 75% of the total.
- The provision authorizing assistance to states under section 106 from the trust fund is deleted.
- The “catch all” provision authorizing other projects for which a state chooses to provide grants is deleted as no longer necessary.
- A more explicit reference is made to the system for allocating funds.
- A provision is added (subsection (e), page 11) making clear that grants may not be used to subsidize growth. This provision restates the prohibition in section 211/40 C.F.R. 904(l).
- The Brooks Act language is modified to delete the reference to state programs.
- Assistance for critical regional programs (Chesapeake Bay, etc.) is included as section 205 of this Title, rather than as a separate Title VI.

### Title III. Amendments to the Safe Drinking Water Act

- The amount of authorized funding is increased from \$3 billion/year to \$4 billion/year, and the percentage that must be used for grants is increased from 50% to 75%.
- The structure is changed, to clarify the relationship between eligibility under section 1452 and the new grant program. Section 302 clarifies and expands eligibility. Section 303 then establishes the grant program.
- States may make grants for any project that is eligible under section 603, rather than only for a subset of such projects. In determining which projects will receive grants, the state must apply criteria set out in section 303 (b).
- Two categories are added as eligible for loans/grants: projects to consolidate system and water conservation projects. Desalination is replaced with “capital projects for alternative water supply.” The description of water conservation projects is modified to include “measures to enable customers to make more efficient use of treated water.”
- A provision is added incorporating the grant program into a state’s intended use plan.
- The “catch all” provision authorizing projects for which a State chooses to provide grants is deleted as no longer necessary.
- The Brooks Act language is modified to delete the reference to state programs.

### Title IV. Technology, Management, and Research

- In section 401 (technology development program), the criteria for selecting projects is modified, to include consideration of the improvement in environmental protection and reduction in public health risk.
- In section 401, one category of eligible project is deleted: addressing “urban or rural population pressure.” Desalination is replaced with “improved methods for identifying and obtaining potable water supplies without causing adverse secondary environmental impacts.”
- In section 401, the various goals/eligible projects are re-phrased, from the negative (e.g., “difficulties in water conservation and efficiency”) to the positive (“improving methods for water conservation and safe re-use”).

- The scope of section 402 (National Center for Utility Management) is broadened, to include issues in addition to comprehensive asset management, such as worker training and flexibility.
- In section 403, the Administrator is directed to contract, to the extent practicable, with expert entities such as the Water Environment Research Foundation, the American Water Works Research Foundation, and the WateReuse Research Foundation.
- For brevity, reporting requirements are deleted from section 401.
- In section 402, the authorization is increased from a total of \$50 million to a total of \$100 million, with \$50 million for water pollution research and \$50 million for drinking water research.

#### Title V. Fisheries Habitat

- The length of the title is reduced, principally by deleting detail regarding the advisory and watershed planning councils and the categories of projects that must be considered for high value/habitat limited waters and for nonpoint sources.

#### (Former) Title VI. Critical Regional Programs

- The text is shifted from a separate title to a section of Title II (section 205).
- The authorization is changed from a total of \$240 million allocated specifically among four programs to an overall authorization of \$250 million that can be allocated by the Administrator among the four specified programs as well as to “other programs to protect and improve water quality in critical regional waters.” (It may be necessary to add a definition of critical regional waters).
- The provision establishing a Gulf of Mexico program is replaced with a provision authorizing funding, from the Trust Fund, for the Hypoxia Action Plan.