

## Section-by-Section Overview of the Clean Water Trust Act of 2005

### Title I – Technical and Management Assistance

#### Section 101: Technical Assistance

The bill modifies Clean Water Act (CWA) §104(b) to authorize EPA to make grants to nonprofit organizations to provide technical assistance to rural and small municipalities in planning, developing and acquiring financing for wastewater infrastructure assistance. Grants to nonprofit organizations are provided to capitalize revolving loan funds for predevelopment costs of wastewater projects or certain equipment replacement costs. Technical assistance and training would be provided to small publicly owned treatment works and decentralized wastewater treatment systems, and to disseminate information to rural and small municipalities and municipalities meeting affordability criteria established by states. The authorization from the Clean Water Trust Fund should not exceed \$50 million per year for technical assistance grants.

Of great importance in this section is the provision adding \$295 million per year for research and demonstration programs for FY 2006-2010. NACWA has heard repeatedly from members and other stakeholders that significant new funding in clean water research is needed and this provision's addition of nearly \$1.5 billion will help meet this challenge.

#### Section 102: National Center for Utility Management

Section 102 establishes a National Center for Utility Management to promote improved management of public wastewater utilities. The authorization is \$5 million per year for five years. The wastewater treatment community has become increasingly aware of what seem to be near-infinite initiatives by the federal government, trade associations, and the International Organization of Standardization, among others, in the utility management arena. There is, however, little overarching organization of these efforts and the creation of the National Center was a consensus provision in NACWA's legislative draft to address this necessity.

#### Section 103: State Management Assistance

Under this section, the bill authorizes \$250 million per year for five years for CWA §106 (a) for state management assistance. This is a significant increase over current authorization for this function, which is critical given the expansion of funding and programs that H.R. 4560 creates. NACWA will continue to discuss with state organizations, such as the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the Environmental Council of States (ECOS), whether this funding level is sufficient and appropriate.

#### Section 104: Watershed Pilot Projects

This section reauthorizes an existing grants program for watershed pilot projects at \$20 million a year for five years. The grants may be used for watershed partnerships to "address non-point sources of pollution to reduce adverse impacts on water quality." NACWA is aware that non-point source pollution is increasingly the major cause of water quality impairment nationally. Although not a solution to the non-point problem by any means, this program will help spur increased dialogue and coordination on a watershed basis to address this important piece of the clean water puzzle.

### Section 105: Critical Regional Waters

This section authorizes \$250 million a year for five years to implement the National Estuary Program (NEP) and programs to improve the Chesapeake Bay, Great Lakes, Long Island Sound, Lake Champlain, and Lake Pontchartrain and for grants to states regarding hypoxia in the Gulf of Mexico. It is impossible to discuss clean water without discussing the regional waterbodies encompassed by the NEP and/or listed above which often are symbols of the scientific, economic and political complexity of the clean water challenges this Nation faces. Furthermore, the support of the groups involved in efforts to restore these waterbodies will be critical to the successful passage of H.R. 4560 as will the support of Members of Congress from the states with a vested interest in these regional waterways.

## **Title II – Construction of Treatment Works**

### Section 201: Sewage Collection Systems

Section 201 amends CWA §211 to create new exceptions to the Act's limits on using grants for projects to build or upgrade sewage collection systems. Specifically, funding can be used for the replacement or major rehabilitation of existing collection systems that is in existence on January 1, 2006 (the date H.R. 4560 takes effect) or to construct new collection systems where the communities they will serve is in existence on January 1, 2006. Of note, these grants must be used for projects that "accomplish the goals of H.R. 4560 by addressing an adverse environmental condition existing on the date of enactment." This "pre-existing environmental condition" language strikes a sound balance between the need to address population growth and the resulting need for increased collection system capacity and the concern of activists that collection system expansion will lead to environmental degradation through sprawl.

### Section 202: Treatment Works Defined

This section amends CWA §212's definition of "treatment works". There are several word changes to the CWA in this section but the most important one adds to this section's provisions on using grants for the purpose of land acquisition. Under this section, grants can be used for "the acquisition of other lands, and interests in lands, which are necessary for construction." This provides public agencies with increased flexibility to purchase needed land for purposes beyond site acquisition, storage of treated wastewater, or disposal of residues, as the CWA is currently drafted.

### Section 203: Policy on Cost-Effectiveness

Providing for the simplification of the Clean Water Act's §218, this section details Congress' statement of policy on the need for grants to be spent on the most cost-effective projects. Specifically, H.R. 4560 amends this section by deleting the language requiring that a project using federal funds must constitute the most cost-effective "combination of devices and systems" and replaces this language with the broader more encompassing term "treatment works." This is beneficial in that it will allow for greater flexibility in defining what projects Congress intends to fund through the trust fund.

### Section 204: Pilot Program for Alternative Water Source Projects

Section 204 authorizes a one-time \$125 million pilot program to fund alternative water source projects to meet critical water supply needs. The CWA §220(j) provided for \$75 million from FY 2002-2004. The definition of "alternative water supply" remains the same and covers projects "designed to provide municipal, industrial, and agricultural water supplies in an environmentally sustainable manner by conserving, managing, reclaiming, or reusing water or wastewater or by treating wastewater. Such term does not include water treatment or

distribution facilities”. This provision is critical to interests in the South and Arid West and will help solidify support for H.R. 4560 from these key regions.

#### Section 205: Sewer Overflow Control Grants

This section authorizes \$250 million per year for sewer overflow grants for FY 2006-2010 and specifies criteria for allocation to the states. The section ensures full funding for the NACWA-supported Wet Weather Water Quality Act (WWWQA) that was signed into law in 2000 but was never funded. The grants would be cost-shared at 55 percent federal and 45 percent local funding, in line with WWWWQA, and not the 65 percent federal and 35 percent local funding cost-sharing ratio that applies to other “High Priority Partnership Grants” made via the trust fund. The reason for this was that the WWWWQA provisions were consensus provisions that passed the House and Senate already so it makes sense to keep them unchanged.

### Title III – State Water Pollution Control Revolving Funds

#### Section 301: General Authority for Capitalization Grants

Section 301 amends CWA §601(a) and broadens the general authority for capitalization grants under the Clean Water State Revolving Fund (CWSRF). Under the CWA, CWSRF funds can provide assistance for: 1) construction of publicly owned treatment works; 2) implementing a management program; and 3) developing and implementing a conservation and management plan. H.R. 4560 would delete these eligibilities and replace them with the broader range of activities listed in Section 303 below.

#### Section 302: Capitalization Grant Agreements

The requirement for generally accepted government accounting standards to the reporting of infrastructure assets is extended under this section. It also requires that the CWA State Revolving Funds (SRFs) be maintained and credited with loan repayments and be maintained in perpetuity. Fees charged can only be used for administering the fund.

Significantly, CWA §602 (b) is amended to add a requirement that, beginning in FY 2008, states must certify that recipients of assistance have evaluated the cost and effectiveness of innovative and alternative processes, materials, and techniques and that they have selected, to the extent practicable, those that efficiently use energy, natural and financial resources. Recipients must consider the cost and effectiveness of alternative management and financing approaches (including rate structure, bonds, restructuring, regional alternatives, consolidation and public-private partnerships). This is, perhaps, the most significant substantive change to NACWA’s draft legislation and is a carry-over from H.R. 1560. In introducing clean water funding legislation Congress cannot simply provide grants without some assurances that ensure the most cost-effective use of federal dollars. This provision accomplishes this goal via municipal “consideration” and state “certification” – a fairly benign standard to accomplish this objective.

This section also directs states, beginning in FY 2008, to use at least 15 percent of CWA capitalization grants to assist municipalities with populations of less than 20,000 (if there are sufficient applications for such assistance). Loan and grant recipients must competitively award contracts and subcontracts for architectural and engineering services.

### Section 303: Water Pollution Control Revolving Loan Funds

CWA §603(c) is amended to add as projects eligible for financial assistance, lake protection projects, repair and replacement of decentralized wastewater treatment systems, municipal stormwater runoff, water conservation, wastewater facility security, and watershed projects. This expanded list benefits municipalities and accounts for regulatory and policy changes that have taken place, for example, in the wake of stormwater regulations, and, of course, the increased focus on the security of the Nation's critical infrastructure since September 11, 2001. Amends §603(d) to allow states to extend repayment terms for loans to up to 30 years or the design life of the project. NACWA has been working on this objective through various vehicles and its inclusion in H.R. 4560 would help make the CWSRF more attractive to many municipalities.

A new provision is added requiring recipients of financial assistance to develop and implement a fiscal sustainability plan including an inventory of the condition of the assets and a plan for maintaining repairing and replacing the assets being funded through the SRF. As with cost-effectiveness (discussed in Section 302 above) sustainable infrastructure has become a "buzzword" that policymakers at EPA and in Congress believe will help ensure cost-effective and priority projects receive federal funding. The sustainability plan will be required for any portion of a treatment works proposed for funding and must include: 1) an inventory of critical assets that are a part of that portion of the treatment works; 2) an evaluation of the condition and performance of inventoried assets or asset groupings; and 3) a plan for maintaining, repairing, and, as necessary, replacing the portion of the treatment and a plan for funding such activities.

Section 303 also amends CWA §603(d) by increasing the allowed reservation for state administrative costs to \$400,000 per year, or one-fifth percent per year of the current valuation of the state's SRF (whichever is greater); adds a new section 303(e) to authorize states to provide CWSRF assistance to small treatment works for technical, planning and financial management and analysis assistance (but not to exceed 2 percent of the capitalization grant for this activity); and adds a new §603(i) directing states, before FY 2008, to establish affordability criteria to identify hardship communities.

Critically, pursuant to the Clean Water Trust Fund, Section 303 also adds grants as an available form of assistance that can be awarded through the CWSRF.

### Section 304: Allotment of Funds

The existing funding formula used to allot sums appropriated by Congress for the CWA SRF should be used in FY 2006 and FY 2007. Beginning in 2008, appropriated amounts up to \$1.35 billion must be allotted under the current formula. Amounts exceeding \$1.35 billion – meaning the grant portion of revenue generated through the trust fund – must be allotted according to a needs-based formula to be developed by EPA. This ensures that no state will receive less than what it currently receives under the CWSRF distribution formula and offers an opportunity to revisit and update the formula and ensure it accounts for population shifts and other changed circumstances.

### Section 305: Intended Use Plans

This section revises CWA §603(g) governing requirements that states create priority project lists for grant funding. Section 305 requires states, beginning in FY 2008, to establish or update a list of projects and activities for which SRF assistance is sought, using an integrated listing methodology each state shall establish. Under the current statute "assistance may be provided regardless of the rank of such project on such list." H.R. 1560 alters this by providing that priority should be given for projects and activities that "seek to achieve the

greatest degree of water quality improvement” and also stating that “if the State does not fund projects and activities in the order of the priority established . . . an explanation of why such a change [is] in order is appropriate.” This section also requires states to consider whether improvements would be realized without SRF assistance. This section also explicitly states that non-point projects may be part of these priority lists. In NACWA’s facilitated sessions there was consensus that trust fund dollars must be explicitly tied to ensuring the greatest degree of water quality improvement and in funding the top priorities first — this section does exactly that.

#### Section 306: Federal Oversight

CWA §606(d) is amended to ensure that state annual reports include information on grants, as well as loans, and requires that the eligible purposes for each SRF-assisted loan or grant be included in State intended use plans. Also, in conducting its annual oversight review of each State intended use plan, H.R. 4560 would allow the EPA Administrator to accept a State’s certification of compliance, along with supporting documents, with the requirements of the CWSRF Title.

#### Section 307: Technical Assistance

CWA §607 becomes a new §609 and CWA §606 is amended — which governs audits, reports and fiscal controls — by adding a new §607 with provisions that direct EPA, within one year of the passage of this legislation, to assist States in establishing simplified procedures for treatment works to obtain SRF assistance. Also, within two years of passage of this legislation, EPA must publish in the *Federal Register* a manual to assist treatment works in obtaining assistance. At the request of any State, EPA must also assist in the development of criteria for a State to determine compliance with previously discussed conditions for receiving funds, namely improving utility management and demonstrating cost-effectiveness of the projects (as established under §602(b)(13)). The need for streamlining the SRF process, especially when adding a major grant component to it as H.R. 4560 does, was a high priority for NACWA members and this section does that. It also restates the importance being placed by Congress and EPA on the concepts of sound utility management and cost-effectiveness (discussed in Sections 302 and 303 above).

#### Section 308: High Priority Partnership Grants

Though appearing toward the end of H.R. 4560, this provision, along with Sections 309 and 401 below, comprises the heart and soul of the legislation. It creates a new §608 to the CWA and lists the projects that are eligible for the billions of dollars in new grant funding — called “*high-priority partnership grants*”. It directs States to give priority to grants that address: 1) the most serious water pollution problems; 2) are necessary to ensure compliance with the CWA; or 3) benefit communities with the greatest need (determined by affordability criteria established by the State). Critically, this section also lays out the federal/state matching provision for grants, which reads “the amount of Federal funds by a State for a project or activity under this section may not exceed 65 percent of the cost of project or activity.” It is critical to note that the funds are “matching” because this demonstrates an abiding belief that the water quality objectives of the CWA, to be successful, must have shared federal-state-local cooperation and investment.

#### Section 309: Authorization of Appropriations from the Clean Water Trust Fund

This is the key section that creates a new grants program for the 21<sup>st</sup> century via a trust fund mechanism. The trust fund component is accomplished by adding a new CWA §610 to appropriate from the Clean Water Trust Fund \$6 billion per year for grants to States from FY 2006–2010, of which the first \$1.5 billion shall be available only for providing loans. The remaining \$4.5 billion shall be for high priority partnership grants under §608

(discussed in the paragraph immediately above). It critical to note that in addition to a major new grant program, the trust fund is also set up to guarantee the future viability of the CWSRF. It was the express intention of NACWA and the other stakeholders involved in the facilitated sessions to secure the CWSRF for the long-term. This section accomplishes this objective at a funding level that is almost twice the current CWSRF revenue level.

## **Title IV – Clean Water Trust Fund**

### Section 401: Establishment of Clean Water Trust Fund

Section 401 amends the Federal Water Pollution Control Act by adding “Title VII – Clean Water Trust Fund” – which establishes the trust fund (Section 701) and makes eligible for receipt of trust fund monies the activities of the *Clean Water Trust Act of 2005*. Again, the programs funded via the trust fund are: the CWSRF (\$1.35 billion); clean water infrastructure grants (\$4.5 billion); sewer overflow control grants (\$250 million); research and technology (\$295 million); a Utility Management Center (\$5 million); technical assistance for rural and small systems (\$50 million); state management assistance (\$250 million); fisheries enhancement (\$250 million); wetlands program grants (\$100 million); regional programs (\$250 million); watershed pilot programs (\$20 million); and, alternative water source pilot projects (\$120 million).

This section also directs EPA to submit to Congress, within 180 days of enactment of this section, an equitable system of user fees to fund the trust fund. It is this section that makes the trust fund a reality and eligible to receive the more than \$7.5 billion in funds contemplated by H.R.4560. It is critical to note that, while this bill does not contemplate specific revenue sources. NACWA has done significant work on viable and appropriate revenue sources and will work closely with EPA and Congress to ensure progress on this remaining issue.

## **Title V – Fisheries**

### Section 501: Fisheries Habitat Protection, Restoration and Enhancement Grants

Section 501 authorizes EPA to make grants to states, municipalities, nonprofit organizations and institutes of higher education to assist in the protection, preservation, and restoration of fresh water, estuarine, and marine fisheries habitat, and for the enhancement of access within a watershed for fisheries uses. Activities funded must be based on a plan for the watershed. The federal share of grants cannot exceed 65 percent of the cost of the activities. There is authorized \$250 million per year for FY 2006 – FY 2010. This section was critical to ensure the support of the conservation community but also to provide funding targeted for the Clean Water Act’s stated objective of making the waterways “fishable”. This title is different from that recommended by NACWA in that it does not amend the CWA, but is instead a stand-alone provision. One of the main roadblocks to gaining the environmentalists groups’ support on the NACWA-led draft legislation was that the fisheries title amended the CWA. With this obstacle removed, NACWA is confident the environmental community, which has publicly touted the trust fund concept, will support H.R. 4560 actively in 2006 – important developments that will help secure broader Democratic support for the legislation.

### Section 502: State Wetlands Restoration Grants

Section 502 authorizes \$112 million per year in fiscal years 2006 – 2010 for the EPA Administrator to make grants to states for wetland restoration projects. Wetlands restoration is critical to ensuring clean water progress and has been a stated priority of the current Administration. Municipal treatment works are also increasingly looking at wetlands as a means to help meet water quality standards and this provision was also important to conservation and environmental interests.

## Title VI – General Provisions

### Section 601: Definition of Treatment Works

This section restates that the definition of “treatment works” remains the same as it is currently under the CWA §212.

### Section 602: Funding for Indian Programs

CWA §518 is amended to increase funds reserved for Indian Tribes to not less than 0.5 percent or more than 1.5 percent of appropriated funds. NACWA has shared this legislation with several organizations representing Indian Tribes and their response has been highly supportive.