

Legislative News

OWOW

Office of Wetlands, Oceans & Watershed

CLEAN WATER ACT REAUTHORIZATION SPECIAL EDITION

Interagency Workgroups Develop Administration Proposal on CWA

Eight interagency workgroups were convened this past Spring and charged with developing an Administration position on the Clean Water Act Reauthorization. After an intense series of meetings, workgroups on watershed management; nonpoint source pollution; toxics; funding; enforcement; permitting; and monitoring succeeded in developing papers reflecting consensus positions. These papers have served as the basis for EPA testimony at seven hearings before the Senate Environment and Public Works Committee this summer. The papers are now being incorporated into a formal Administration "Green Book," which will be used in future discussions with Capitol Hill. The Wetlands Interagency Workgroup, chaired by Keith Laughlin of the White House, has been meeting twice weekly in preparation for a final Senate hearing on wetlands scheduled for September.



Bipartisan Clean Water Proposal Features Watershed Management and NPS Controls

On June 15th, Senators Max Baucus (D-MT) and John Chafee (R-RI), Chairman and Ranking Minority Member of the Senate Environment and Public Works Committee, jointly introduced S.1114, the Water Pollution Prevention and Control Act. Acting Administrator Martha Prothro and other Office of Water officials regularly met with Senate staff to provide technical advice and assistance while the bill was being crafted. Chairman Baucus plans to have S.1114 ready for mark-up this fall and has pledged to bring the bill to the Senate floor before the end of the year.

In the House, both the Merchant Marine and Fisheries Committee and the Public Works and Transportation Committee are expected to introduce their own measures after the August recess.

S. 1114 - - Watershed Management

S.1114 includes a new provision to encourage states to undertake comprehensive watershed management by offering financial and regulatory incentives. Under the proposal, Governors would designate impaired watersheds (i.e. not meeting water quality or sediment standards or designated uses) or special protection watersheds (i.e. outstanding national resource waters

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Grubbs Testifies at Senate Hearing on NPS and S. 1114

OWOW's Geoffrey Grubbs presented testimony before the Senate at a July 21st hearing examining nonpoint source pollution. Other witnesses included New York City's Environmental Commissioner Albert Appleton; Diane Cameron of the National Resources Defense Council; Paul Genho of the National Cattleman's Association; and Willard De Golyer, a dairy farmer from New York State.

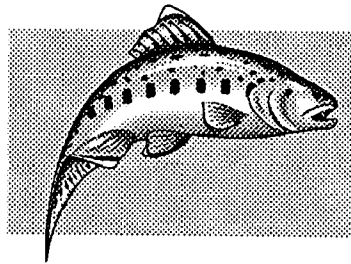
In his opening remarks, Ranking Minority Member John Chafee said that he will consider S. 1114 "a success" if it ultimately addresses nonpoint source pollution and nothing else. Chafee also noted the importance of using a watershed approach to address nonpoint source pollution. Full Committee Chairman Baucus said he is optimistic nonpoint source problems can be dealt with, because, he said, environmentalists and farmers are "turning from rhetoric to constructive solutions."

In his statement, Grubbs told the subcommittee that nonpoint source pollution remains our most dominant water quality and environmental concern. While progress has been made by states since the enactment of Section 319 in the 1987 Clean Water Act Amendments, Grubbs noted that states continue to list nonpoint source pollution as the primary reason water quality objectives are not met. Agriculture, urban runoff and stormwater, resource extraction, hydrologic modifications, and contaminated sediments, he said, are the major sources of impairments reported by states. Grubbs also described how urbanization and development can alter watersheds and their wetlands, causing higher and more frequent runoff with subsequent downstream erosion, riparian alterations and destruction of habitat. He said the Coastal Zone Management Act (CZARA) will help to provide a stronger mandate in the coastal areas. Grubbs said, however, that stronger authorities are needed. He said EPA believes that voluntary approaches should be

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Senate Subcommittee Hears Testimony on Watershed Management and S. 1114

Watershed management received strong endorsement during a Senate Environment and Public Works Subcommittee hearing on July 27th, which featured Blake Anderson of the Association of Metropolitan Sewerage Agencies (AMSA); Charles Gauvin of Trout Unlimited; Curt Spalding of Save the Bay in Rhode Island; Steve Tedder of North Carolina's Division of Environmental Management; and Lorna Stickel from the Western Governors Association. While not officially invited to testify, Acting Assistant Administrator Martha Prothro and OWOW Director Bob Wayland were available to answer questions and were invited to submit a written statement for the record.



In his opening statement, Subcommittee Chairman Graham said he favored a watershed approach as a means to address nonpoint source pollution, which he said is our most serious remaining water resource problem. He also credited the approach as a way to motivate and educate communities and to tailor solutions to meet local problems. Graham specifically questioned witnesses about whether the approach should be "voluntary or mandatory" and what barriers they perceive are currently in the way of state efforts to adopt a watershed approach.

AMSA's Blake Anderson advocated that a mandatory approach be adopted in S.1114, arguing that the bill needs to ensure there is a level playing field and steady progress is made toward achieving environmental goals. He added that while AMSA endorses S. 1114's concept of "management entities," his organization believes their composition needs to be very

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Baucus-Chafee Introduce Wetlands Component

On July 28th, Senators Baucus and Chafee introduced S. 1304, the Wetlands Conservation and Regulatory Improvements Act of 1993. Chairman Baucus intends to incorporate the measure into S. 1114, the broader CWA reauthorization measure, when the bill is marked up this fall. When introducing the bill, Baucus cited the following four objectives: to improve the wetlands regulatory program; to simplify farmer/rancher compliance; to enhance state involvement; and to strengthen wetlands protection and restoration efforts. The bill makes wetlands protection and restoration a goal of the Clean Water Act. It also would clarify that activities covered under Section 404 include excavation, ditching, channelization and other excavation activities resulting in wetlands loss or degradation.

In terms of regulatory changes, the bill would tighten deadlines for permit processing and would provide for streamlined decision-making for wetlands within an approved wetlands and watershed management plan. Local watershed plans approved under the bill's new Section 321 could be eligible to receive general permits, provided the responsible unit of government has the legal authority and scientific monitoring capability to issue, monitor, and enforce permits consistent with the federal program. In an effort to offset unavoidable wetlands losses and to improve the quantity and quality of wetlands resources through restoration, S. 1304 would authorize the use of mitigation banks, subject to strict guidelines. Mitigation banks, for example, would have to provide for "in-kind" replacement of lost wetland functions near or within the same watershed as the impacted wetlands. Another safeguard would require that fees charged for participating in the mitigation bank reflect the full costs of replacing lost wetlands functions and acreage, including the costs of land acquisition; wetlands establishment; management measures; long-term maintenance; and monitoring.

With regard to the Delineation Manual, the bill would require that a new manual be developed

after completion of the National Academy of Sciences' study, which is due to be released late next year. In the meantime, the bill would mandate continued use of the 1987 Corps of Engineers Delineation manual and implementing guidelines. To assist small landowners with issues relating to wetlands identification and delineation, the bill would authorize up to \$5 million in technical assistance.

In an effort to address issues raised by the farming and ranching communities, the bill would clarify that prior converted cropland, stock ponds and areas created by irrigation are exempt from Section 404 requirements. Additionally, the bill provides for regulations to be issued to allow Section 404 general permits for any activity determined by the Soil Conservation Service (SCS) to be exempt under the mitigation and minimal effect provisions under the Food Security Act's swampbuster program. Moreover, the bill directs the EPA, COE and the SCS to develop consistent policies with regard to wetland determinations on agricultural lands, so that to the extent possible, a determination made by any one agency would be accepted under either the CWA or the Food Security Act.

The bill also includes "non-regulatory" approaches to wetlands protection and restoration. To encourage and facilitate state involvement in wetlands protection, the bill authorizes and funds the development of state wetland conservation plans as a more comprehensive and integrated approach to wetlands protection at the state and local level. To help federal and state wetlands protection efforts to look beyond impacts to a specific wetland and to consider the effects on a watershed scale, the bill also encourages the development of wetlands and watershed management plans. In addition, to achieve the goal of protection and restoring wetlands, the bill directs the Corps of Engineers, along with the EPA, the USFWS, the SCS, the NMFS, and other state and local authorities, to develop a National Cooperative Wetlands Restoration Strategy to coordinate and monitor restoration efforts throughout the United States.

or waters with sensitive aquatic or wildlife habitat) for comprehensive planning and management efforts. Watershed designations, which would be subject to EPA approval, would be consistent with USGS hydrological units to the extent practicable. Following EPA guidance, Governors would designate watershed management entities that would be charged with developing and implementing watershed plans. Governors would then submit these locally-developed plans for EPA approval.

Plans would have to include certain elements, including a characterization of the watershed; identification of its problems; establishment of short-term and long-term goals (including allocation of pollutant load reductions among point and nonpoint sources); selection of activities and projects to meet established goals; and identification of the necessary financial and institutional arrangements to carry out the plan. For watersheds not meeting water quality or sediment quality standards, plans would have to provide for the attainment of standards within 10 years after the plan's submittal. Standards would have to met within 5 years in those watersheds with impairments due only to point sources or whose point source allocations were reduced by applying controls over nonpoint sources.

In terms of incentives, S. 1114 would provide several financial and regulatory incentives. Projects and activities in watersheds with approved plans, for example, would be eligible for monies under the State Revolving Loan Fund (SRF) and eligible to be included in the SRF needs assessment. In terms of regulatory incentives, S. 1114 would facilitate trading between point and nonpoint sources and would provide some regulatory flexibility for point sources. Point source permittees would be granted relief from attaining water quality standards, but not technology-based controls (subject to the anti-backsliding provisions of S402 (o)), as long as the approved watershed

plan had enforceable requirements to control nonpoint sources that, in combination with the limitations established for point sources, provided for the attainment of water quality standards. To encourage states to synchronize their point source permits along a watershed basis, S.1114 would allow for a one-time extension of permits up to 4 years.

The bill would authorize EPA to delegate authority to the states to approve watershed plans if the state submitted a program that was as equally stringent as required under EPA-issued guidance. EPA would be required to issue guidance specifying minimum requirements for watershed designation, legal authorities and financial resources for management entities, public participation and criteria for plan approval.

S. 1114 -- Nonpoint Source Provisions

To address nonpoint source pollution, S.1114 would require states within 2 1/2 years to revise their nonpoint source programs, consistent with EPA-issued guidance. Each state program would have to be reviewed and revised within 7 years of enactment. For new sources, state management programs would be required to have a schedule containing annual milestones for the implementation of management measures, outlined in EPA guidance, as expeditiously as possible, but no later than 3 years after program approval. States would be granted the flexibility to adopt alternative requirements for a specific source of nonpoint source pollution if they could demonstrate that the alternative requirements would represent maximum management measures within the economic capability of the source and would result in reasonable further progress toward the elimination of pollution. States would also be authorized to exempt a category of sources listed in EPA guidance, if they could demonstrate that the category of sources does not cause impairment to waters within the state. Each state plan would need to provide for the neces-

sary legal authority to ensure enforceability. The bill directs EPA to publish guidance within 90 days of enactment and final guidance within 180 days specifying the elements of a nonpoint source pollution program. These would include a description of categories and subcategories of sources of nonpoint source pollution; management measures appropriate for each category; program implementation criteria; methods to estimate reductions in nonpoint source pollutant loads necessary to attain and maintain water and sediment quality standards; and necessary monitoring. The bill defines "management measures" to mean economically-achievable measures to control the addition of pollutants from existing sources and new sources that reflect the greatest degree of pollutant reduction achievable through application of Best Available Control Technology (BACT). New sources would include development of a commercial or residential site of 5 or more acres not subject to storm water permits; road construction not subject to a storm water permit; timber harvesting or road building; and other activities.

Not later than seven years after enactment, states would have to review and revise their nonpoint source management plans. Each plan would have to provide for the necessary authority to ensure implementation of management measures for existing sources and new sources. Where there is an approved watershed plan, the state would be allowed to implement site-specific water-quality plans, instead of the EPA-promulgated management measures. Each site-specific plan would have to be approved by the appropriate federal agency. Plans would have to provide for the implementation of management measures appropriate to the site that are economically achievable and will reduce pollution. In terms of agricultural sources, plans would have to be developed and implemented with the assistance of the Department of Agriculture. Moreover, EPA, in consultation with USDA, would be required to publish a handbook within 18 months to assist in the develop-

ment of these plans. To address problems with animal wastes, EPA would also be tasked with developing guidelines within 2 years, in consultation with USDA, for the construction of animal waste management facilities.

If states fail to submit a nonpoint source plan, EPA would be required to publish a regulation providing for the implementation of enforceable minimum control measures for categories of nonpoint sources in the state. In terms of funding, S. 1114 would increase funding under Section 319 by authorizing appropriations of \$300 million in Fiscal Year 1995 (FY 95), \$500 million for each FY '96 through FY '98 and \$600 million for each FY's 1999 and 2000.

S. 1114 - - Water Quality Monitoring

S. 1114 would strengthen state monitoring programs by requiring: 1) assessments to determine whether the waters of the state provide for the protection and propagation of a balanced population of shellfish, fish and wildlife and allow for recreational activities; 2) identification of waters not attaining or maintaining designated uses or water quality standards; 3) assessments to determine the contribution of point and nonpoint sources; 4) monitoring activities conducted on a staggered basis so that there would be continuous data collection over a 5 year period. Additionally, EPA would be charged with promulgating regulations specifying minimum elements of state programs within 2 years of enactment.

The bill also would establish a Water Quality Monitoring Council, which would be chaired by EPA and the USGS, to review and make recommendations on the coordination and implementation of federal and state water and sediment quality monitoring programs.

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clearly defined to include all stakeholders, including state, federal, local government, citizens, and the environmental community. He also said the entities need to be empowered and that EPA needs to be a player at the table, so that once a plan is developed, it can receive instantaneous approval. He warned that gridlock would occur if plans are approved 1,000 of miles away in Washington, as proposed in S.1114.

Charles Gauvin of Trout Unlimited highlighted the importance of addressing our nation's "biological deficit," notably the threats to our valuable fish and wildlife, particularly, the declining salmon and trout stock in the Pacific Northwest. He said that S. 1114 was "a step in the right direction," but argued that the bill needs to be strengthened to protect and monitor species diversity. He emphasized the need to address "instream flows," pointing out that hydropower kills fish, too. Save the Bay's Curt Spalding praised S. 1114 for emphasizing watershed management, but agreed with AMSA's remarks that the bill needs to be strengthened to ensure adequate stakeholder involvement in management entities. He applauded S. 1114's use of a set-aside for watershed management, but said a local match should be required. He added that watershed management should be mandatory for nonattainment areas.

Representing the state of North Carolina, Steve Tedder touted his state's success with basin-wide planning and described how N.C. has realized tremendous savings and efficiencies in adopting a watershed approach. Nevertheless, he cautioned the Senators against adopting a "one size fits all approach," and he warned that S. 1114 might hinder state's efforts to adopt watershed management because of the "bureaucratic hoops" it would put states through.

Finally, Lorna Stickel from the Western Governors Association testified that S. 1114 should "encourage, but not mandate" watershed management. She stressed that the bill should

emphasize performance rather than planning and that management entities should in fact be "coordinating bodies." She also recommended that the bill establish timeframes to ensure that high quality waters are addressed, and not only those that are impaired. When specifically asked whether the approach should be voluntary or mandatory, she responded with a "qualified No." She elaborated that watershed management is not just about water quality, but also about water quantity. She further explained that with the right incentives, the states will make it work and noted that, particularly in the Northwest, water resource problems are fundamentally economic and quality of life issues that must be addressed by the states and locals.

In written testimony, EPA praised the committee for including a watershed component in S.1114 that awards states that on a volunteer basis undertake watershed management by granting financial and regulatory incentives. It was noted, however, that S. 1114 should be modified to encourage states to develop comprehensive state programs, instead of designating selected, individual watersheds. At a minimum, it was recommended that to become eligible for incentives, states should conduct a state-wide delineation of all watersheds; prepare an inventory of impaired and threatened waters as well as other waters deserving special attention (such as estuaries, drinking water sources, priority groundwater or outstanding resource waters); rank all watersheds according to established criteria; develop a process and schedule to select watersheds for which management entities would be established; and convene watershed management teams that would develop and implement watershed-level plans. EPA also recommended that states, not EPA, approve watershed-level plans.



reinforced and relied upon as the first strategy of choice, but that state programs should include compulsory mechanisms, including enforcement authorities, if within a reasonable time frame, voluntary measures fail to result in implementation of management measures.

Grubbs recommended that Section 319 be amended to bolster state nonpoint source programs, in concert with a watershed approach. He agreed with provisions in S. 1114 that require states to update assessments of their watersheds, but said that these assessments should be broader. He said assessments should cover not only impaired, but also "threatened" watersheds and should also include major relevant stresses on ecosystems, in addition to chemical pollutants.

Grubbs advocated rewarding states that adopt strong, comprehensive watershed program that provide for expeditiously addressing stressors in high priority areas, by granting them the authority to adopt their own nonpoint source management measures in lieu of national management measures. In impaired or threatened areas where states do not opt for a watershed approach, he said existing nonpoint source programs should be upgraded to implement best available management measures for categories of nonpoint sources.

Agricultural witnesses, including Judy Olson with the National Association of Wheat Growers, testified in support of voluntary, incentive-based approaches to address nonpoint source pollution. She and other representatives from the agricultural community voiced opposition to federally-based controls and prescriptive land-use planning and emphasized the need for flexible measures tailored to reflect local conditions. Environmentalists, on the other hand, called for mandatory requirements, arguing for even stronger authorities and performance standards than those advocated in S. 1114.

Wayland Testifies before Senate on Water Quality Monitoring and Federal Cooperation

On August 4th, OWOW Director Bob Wayland joined a panel of federal agency experts to discuss water quality monitoring and efforts to enhance federal agency cooperation. The hearing also served as opportunity for the other federal agencies to present their views on S. 1114. The panel included James Lyons, Assistant Secretary for the Department of Agriculture; Dallas Peck, Director of the U.S. Geological Survey; Douglas Hall, Assistant Secretary with the National Oceanic and Atmospheric Administration; and Michael Spear, Assistant Director with the Fish and Wildlife Service.

Wayland discussed the importance of water quality monitoring in terms of setting strategic goals; directing resources and establishing program priorities; and measuring how well goals are met. He discussed EPA's leadership role in coordinating monitoring efforts by establishing, along with USGS, a three-year Intergovernmental Task Force on Monitoring Water Quality (ITFM), which includes eight other Federal agencies, and ten States, Interstate and Indian organizations. He said the Task Force is developing products for five major problem areas in monitoring, including institutional collaboration; environmental indicators; field and laboratory methods comparability; information management and sharing; and assessment and reporting.

Wayland applauded S.1114's provisions to strengthen state efforts, including a requirement for minimum state water monitoring programs. He also commended the Senate for changing the state and Federal water quality reporting cycle from two to five years and noted that a five-year cycle will help the states better integrate their monitoring and abatement programs on a watershed basis. He also praised the bill for recognizing the importance of volunteer monitoring. However, Wayland questioned the need to establish a Water Quality Council, as proposed in S. 1114, arguing that its creation would be redundant with the ITFM, which he said, is already carrying out an even broader mandate.

Senate Hearing Examines Regional Issues and Great Water Bodies

On August 4th, seven panels of witnesses presented testimony during a lengthy hearing before the Senate Environment and Public Works Subcommittee, focusing on several geographically-based programs, including three great waterbody programs: the Chesapeake Bay, Great Lakes, and Gulf of Mexico Programs. The Clean Lakes Program and National Estuary Program (NEP) were also a key focus of the hearing, which sought to examine lessons learned from these and other programs that have undertaken watershed management. Witnesses included Dawn Martin of the American Oceans Campaign; Richard Wedepohl, of the North American Lake Management Society; Caren Glotfelty, of Pennsylvania's Department of Environmental Resources; and William Baker, President of the Chesapeake Bay Foundation.

The Chesapeake Bay Program was a major focus of the hearing, and witnesses described it as a "laboratory for watershed management approaches." Chesapeake Bay Foundation President William Baker spoke of the "unprecedented" spirit of cooperation among all of the Bay's stakeholders. Pennsylvania's Carin Glotfelty described how her state is now beginning to make progress to control nonpoint sources of pollution, particularly from agricultural sources, which enter the Susquehanna watershed and ultimately end up in the Bay. She said that a new Pennsylvania state law, Act 6, which requires the preparation and implementation of nutrient management plans by high density livestock farms, may serve as a model for other states. She said the law relies less on "command and control" and more on shared goals, education and cooperation, and technical assistance and that it is tailored to allow farmers to develop plans that take into account their crop needs, soil nutrient content, available manure and farming practices. She added that the program is being administered through the country's conservation districts, which are traditional allies of the farming community. Connecticut Senator Joseph Lieberman applauded this new awareness for a broader,

ecosystem or watershed-based approach, which he labeled a "conceptual breakthrough." He described how a watershed approach is being adopted in the restoration of Long Island Sound, and noted that Connecticut is beginning to more fully appreciate the interconnectedness of all systems, as he described his state's recent discovery that salmon migrations in the Connecticut River actually begin thousands of miles away in Canada.

Numerous Senators and Representatives also presented testimony in support of various legislative initiatives they would like to see incorporated into S. 1114. Senate Majority Leader George Mitchell (D-ME) testified in support of two bills he has introduced — S. 1199, the Coastal Protection Act, and S. 1198, the Lake Assessment and Protection Act. Maryland's Senator Paul Sarbanes discussed his proposal, S. 567, the Chesapeake Bay Restoration Act, and Senator Howard Metzenbaum (D-OH) urged support for his bill, S. 1183, the Great Lakes Clean Water Amendments, which seeks to address the problems of contaminated sediments. Subcommittee members Lautenberg (D-NJ) and Joseph Lieberman (D-CT) also took the opportunity to endorse their proposals. Lautenberg's bill, the Beaches Environmental Assessment, Closure and Health Act, would establish uniform procedures for beach testing and monitoring (to measure short-term increases in pathogens); and Lieberman's bill, S. 815, the Water Pollution Control and Estuary Restoration Financing Act, would make some modifications to the NEP, including the creation of a separate set-aside in the State Revolving Loan Fund for the purposes of implementing Comprehensive Conservation Management Plans (CCMPs). House Agriculture Committee Chairman Kika De La Garza submitted testimony in support of his proposal S. 1566, which would formally establish the Gulf of Mexico Program within EPA; would create a Gulf of Mexico Commission; and would require the Department of Agriculture to conduct a complete inventory of laws and regulations affecting agricultural wetlands.