



APWA Washington REPORT

December 2002

EMERGENCY MANAGEMENT/DISASTER MITIGATION

Homeland Security

NEW LAW COMBINES 22 FEDERAL AGENCIES INTO ONE HOMELAND SECURITY DEPARTMENT

President Bush signed into law legislation to create a new Department of Homeland Security, triggering the largest reorganization of the federal government in half a century. The new department will absorb the functions of 22 federal agencies and more than 170,000 federal employees as part of its mission to analyze and monitor terrorist threats, protect critical infrastructure and prepare and coordinate a response in the event of emergencies. The new department's budget will be about \$40 billion.

President Bush signed the Homeland Security Act of 2002 on November 25, 2002, which requires the department to be operational one year from that date. Bush has 60 days to submit an organizational plan outlining how the various organizational units will work together to fulfill the department's mission. As part of that plan, Bush named Gov. Tom Ridge to be Secretary of the new department, and will nominate Navy Secretary Gordon England to be Ridge's deputy and Asa Hutchinson, the head of the Drug Enforcement Administration, to be undersecretary of border and transportation security.

The new department will include four directorates:

- Border and Transportation Security (to include Coast Guard, Immigration and Naturalization Services and the Transportation Security Administration)
- Emergency Preparedness and Response (to include the Federal Emergency Management Agency)
- Chemical, Biological, Radiological and Nuclear Countermeasures
- Information Analysis and Infrastructure Protection

The Senate passed the Homeland Security bill by a vote of 90-7 on November 19, 2002, and the House of Representatives cleared it on November 22, 2002. Not included in the bill was \$3.5 billion in first responder assistance that Bush had been seeking for nearly one year. Cities have been advocating for assistance since the events of September 11, 2001, when they began to invest heavily in homeland security efforts. Cities have spent more than \$2.6 billion for security in the past year.

More information and an analysis of the Homeland Security Act of 2002 are available on the White House website at: <http://www.whitehouse.gov/deptofhomeland/analysis/index.html>.

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Emergency Preparedness

NATIONAL SUMMIT BRINGS TOGETHER STATE AND LOCAL ORGANIZATIONS

APWA members Larry Lux, Larry Nadeau and Paul Brum represented APWA at a national summit which brought together state and local organizations responsible for all hazards emergency preparedness and homeland security. The National Emergency Preparedness & Response Partnership Summit, sponsored by the National Emergency Management Association, included professionals representing public works, law enforcement, fire and rescue, health officials, emergency medical and communications operators.

The summit served as an opportunity for representatives of the participating organizations to establish and solidify professional relationships, learn about priority issues and identify areas of mutual agreement. The summit was held in Washington, DC on November 12 and 13, 2002.

TRANSPORTATION

Traffic Control Devices

FHWA PUBLISHES CORRECTION TO COLOR SPECIFICATIONS RULE

The Federal Highway Administration (FHWA) has issued a notice that corrects the final rule on color specifications published in the Federal Register on July 31, 2002 (67 FR 49569). FHWA is removing the sentence that requires the traffic control materials to maintain the color and luminance factors throughout the service life and making a typographical correction to a number in one of the color tables. The effective date is December 23, 2002. The full notice appeared in the November 21, 2002 *Federal Register*.

For more information contact Ernest Huckaby in the FHWA office of Transportation Operations at 202-366-9064.

Environmental Streamlining

FHWA SETS GOALS TO IMPROVE TIMELINESS OF PROJECT REVIEWS

The Federal Highway Administration (FHWA) has released new goals for reducing the time it takes to complete transportation projects as part of its environmental streamlining objectives. The timeframe objectives are included in a document on the agency's website, titled *FHWA's Vital Few Goal -- Environmental Stewardship and Streamlining*.

To improve the timeliness of the environmental process, FHWA cites these objectives:

- Establish time frames for Environmental Assessments (EA) and Environmental Impact Statements (EIS) and meet the schedules for 90% of those projects by September 30, 2007;
- Decrease the median time it takes to complete an EIS from 54 months to 36 months by September 30, 2007;
- And decrease the median time to complete an EA from approximately 18 months to 12 months by September 30, 2007.

In November, APWA joined key transportation and environmental organizations to discuss plans for implementing a Presidential Executive Order to enhance environmental stewardship and streamline the environmental review process for transportation projects.

The FHWA environmental stewardship and streamlining goals may be viewed on the agency's website at: <http://www.fhwa.dot.gov/environment/strmlng/essovervw.htm>

INTERGOVERNMENTAL

FY03 Appropriations

NEW CONGRESS MUST ADDRESS UNFINISHED APPROPRIATIONS IN JANUARY

When the 108th Congress convenes on January 7, 2003, it will have four days to pass 11 of the 13 unfinished fiscal year 2003 appropriations bills before a seventh continuing resolution (CR), or short-term spending bill, expires on January 11, 2003. The latest CR was passed during the final days of a brief lame duck session after the mid-term elections. The 2003 fiscal year began October 1, 2002.

The Republican leadership has pledged that Congress will complete the unfinished appropriations quickly upon its return to Washington, possibly folding the bills into an omnibus package ready for enactment prior to the President's State of the Union address on January 28, 2003.

The 107th Congress completed work on the \$355 billion Defense Appropriations bill and the \$10.5 billion Military Construction Appropriations bill before the mid-term elections, and both bills were signed into law October 23, 2002. The latest CR is funding all other federal programs at fiscal year 2002 levels. The federal highway program, however, is capped at an annual level of \$27.7 billion, which is the House Appropriations Committee's proposed level, although states may obligate at the 2002 fiscal year funding level of \$31.8 billion. Lack of completed appropriations bills has forced some federal agencies to postpone implementing certain agency objectives.

Prior to adjournment on November 22, 2002, just five bills had been passed in the House of Representatives: the Defense, Interior, Legislative Branch, Military Construction and Treasury/Postal bills. The Senate had completed three bills: the Legislative Branch, Military Construction and Defense bills. The following chart illustrates the status of fiscal year 2003 appropriations bills.

Status of FY2003 Appropriations Bills
Checkmark indicates approval.

Appropriations Bill	House Committee Approval	House Passage	Senate Committee Approval	Senate Passage	House Conference Approval	Senate Conference Approval	Signed into Law
Agriculture	✓		✓				
Commerce/Justice/State			✓				
Defense	✓	✓	✓	✓	✓	✓	✓
District of Columbia	✓		✓				
Energy & Water	✓		✓				
Foreign Operations	✓		✓				
Interior	✓	✓	✓				
Labor/HHS/ Education			✓				
Legislative Branch	✓	✓	✓	✓			
Military Construction	✓	✓	✓	✓	✓	✓	✓
Transportation	✓		✓				
Treasury/Postal	✓	✓	✓				
VA/HUD/ Independent Agencies	✓		✓				

108th Congress

CLEAN AIR, TEA-21, WATER INFRASTRUCTURE TO TOP SENATE COMMITTEE AGENDAS

Senate Committees with jurisdiction over public works issues will have new chairmen who will set new agendas when the 108th Congress convenes in January 2003. The incoming chair of the Senate Environment and Public Works Committee, Sen. James Inhofe (R-OK), has already begun to set his agenda for next year. Inhofe, who will replace Sen. James Jeffords (I-VT) as chair, says that he plans to focus on reauthorization of the Clean Air Act, reauthorization of TEA-21, reauthorization of the Army Corps of Engineers' water resources projects and funding for drinking water and wastewater infrastructure needs.

The Environment and Public Works Subcommittee on Transportation, Infrastructure and Nuclear Safety will be chaired by Sen. Christopher Bond (R-MO). His committee will write the highway portion of the successor to TEA-21. Bond is the only member of the Environment and Public Works Committee who will sit on both the Senate Budget and Appropriations Committees, where funding decisions for transportation programs will be made. The Senate Banking, Housing and Urban Affairs Committee will write the transit title to the TEA-21 successor. TEA-21 expires September 30, 2003.

Sen. John McCain (R-AZ), who replaces Ernest Hollings (D-SC) on the Commerce, Science and Transportation Committee, announced his agenda for 2003, which includes reauthorization of the Federal Communications Commission, deployment of broadband, transportation security, reauthorization of aviation programs, Amtrak reform and reauthorization of TEA-21's safety programs.

On the House side, Rep. Don Young (R-AK) will return as chair of the House Transportation and Infrastructure Committee, which will have jurisdiction over reauthorization of TEA-21, reauthorization of aviation programs, and water infrastructure issues, all committee priorities. Every one of the 67 Transportation and Infrastructure Committee members who sought re-election on November 5, 2002 won their seats. Eight committee seats are open due to members who did not seek re-election. The 75-member committee is the largest in Congress.

Pipeline Safety

NEW LAW MANDATES PERIODIC SAFETY INSPECTIONS

Legislation to reauthorize and strengthen federal pipeline safety programs through 2006 cleared Congress November 15, 2002. The Pipeline Safety Improvement Act (HR 3609) mandates periodic pipeline safety inspections, stiffens civil penalties for violations, requires anti-terrorism measures, provides new funding for research and development to improve pipe quality, materials inspection, and excavation and repair technologies. President Bush is expected to sign the measure into law.

The bill is also designed to improve states' one-call notification systems to avoid damage to pipelines by a third party, therefore improving the ability of contractors to conduct their activities without the danger of digging up gas lines. The bill would also increase state oversight, establish a permit streamlining program, and authorize \$100 million for research and development funding.

The pipeline safety component had been included in the energy bill. When efforts to reach agreement on an energy package broke down, lawmakers stripped out the pipeline safety provision to pass a stand-alone bill (See Energy Bill, p. 5).

The legislation requires inspections within the next 10 years to prevent leaks and ruptures in pipelines. More problematic pipelines will be inspected within the first five years. All pipelines would then be re-inspected every seven years following the 10-year interval.

Included in the legislation is a section (Section 11) on population encroachment. The language calls for:

- A study to be done on land use practices and zoning ordinances.
- A determination of effective practices to limit encroachment on existing pipeline rights-of-way.
- Addressing and preventing the hazards and risk to the public and the environment associated with encroachment on pipeline rights-of-way.
- Raised awareness of the risks and hazards of encroachment on pipeline rights-of-way.
- Federal agencies and states and local governments to monitor and reduce encroachment upon pipeline rights-of-way.
- A report from the Secretary of Transportation identifying practices, laws and ordinances that are most successful in addressing issues of encroachment on pipeline rights-of-way so as to more effectively protect public safety and the environment.
- The Secretary to encourage federal agencies, states and local governments to adopt and implement appropriate practices, laws and ordinances, as identified in the report, to address the risks and hazards associated with encroachment upon pipeline rights-of-way.

Text of the bill is available on APWA's Legislative Action Center: <http://capwiz.com/apwa/issues/bills/?bill=187051>.

National Rural Policy

APWA SENDS LETTER IN SUPPORT OF RURAL INITIATIVES

APWA joined other national organizations, including the National Association of Counties, in sending a letter seeking President Bush's support for improving the economic and social well-being of small town and rural America. APWA's Small Cities/Rural Communities Forum has been advocating on behalf of meeting the needs of public works services and programs in the nation's rural areas.

APWA and other organizations are expressing support for three federal initiatives that would help improve the policy focus and delivery of federal assistance programs in smaller communities. The first initiative is replicating the innovative Health and Human Services rural initiative to improve the coordination, delivery and focus of rural health care and social services programs. The other initiatives include implementing two provisions of the 2002 farm bill.

The first farm bill provision the letter supports is the new National Board on Rural America, a 14-member panel set up both to help facilitate a renewed national dialogue on the future of rural America and to help forge new regional public-private sector partnerships. The second provision the letter supports is the National Conference on Rural America, which will offer a unique opportunity to highlight rural community success stories, and also discuss the distinctive policy and programmatic challenges confronting small town and rural America.

Small City/Rural Community Revitalization

INFORMATION AND FUNDING SOURCE INFORMATION AVAILABLE

Key planning elements, funding and data sources coupled with working examples and “how-to” text on rural downtown revitalization can be accessed electronically at <http://www.nal.usda.gov/ric/faqs/downtnfaq.htm>

Additionally, there are contacts, a publications list and other listed resources.

Rights-of-Way

LOCAL OFFICIALS DISCUSS MANAGEMENT ISSUES

APWA joined local, state and tribal organizations and federal officials in a meeting to discuss ways to improve management of federal rights-of-way. APWA, the National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities and US Conference of Mayors met with the Federal Rights of Way Working Group, headed by Nancy Victory, Assistant Secretary of Commerce and Administrator of the National Telecommunications and Information Administration.

During the meeting, held November 18, 2002 in Washington, DC, local officials shared examples of effective practices and experiences in managing rights-of-way. They emphasized the importance of coordination, consultation and cooperation among state, local and federal partners.

The Federal Rights of Way Working Group consists of land managers from the various federal agencies, including the US Department of Transportation, the US Department of Agriculture, the US Department of the Interior, the Bureau of Indian Affairs, the National Oceanic and Atmospheric Administration and others. The meeting was held at the US Department of Commerce.

Energy Bill

LEGISLATION DIES AFTER PARED-DOWN BILL MEETS RESISTANCE

A comprehensive energy bill (HR 4), which had passed both the House and Senate earlier this year, died in conference committee after efforts to move a stripped-down version met resistance.

Rep. Billy Tauzin (R-LA), chair of the House Energy and Commerce Committee, had proposed a stripped-down version during the two-week Congressional lame duck session, but Senate conferees opted not to accept the offer. The legislation had been tied up in a conference committee for months as unresolved controversial issues impeded progress toward compromise. Provisions over oil drilling in the Arctic National Wildlife Refuge and electricity industry restructuring were among the controversial issues.

Tauzin’s pared-down measure included provisions extending liability protection to the nuclear industry and strengthening pipeline safety laws. The pipeline safety provisions were later stripped out and passed as a separate bill. (See Pipeline Safety, p. 4)

The energy bill was a \$19.7 billion, five-year measure which included provisions for conservation, alternative fuels and energy tax incentives. Efforts to pass a comprehensive energy bill are expected again in the 108th Congress.

ENVIRONMENT

Watershed Protection

CONGRESS PASSES \$325 MILLION TO HELP CONSERVE WETLANDS

Congress passed legislation authorizing \$325 million over five years for wetlands conservation programs. The North American Wetlands Conservation Act (HR 3908) passed the House of Representatives on November 15, 2002, following the Senate's passage of the bill on November 14, 2002. The President is expected to sign the measure.

The legislation authorizes \$55 million for fiscal year 2003, with an increase of \$5 million per year until it reaches \$75 million in fiscal 2007. These funds have, since 1991, resulted in the protection, restoration, or enhancement of about 8.7 billion acres of wetlands and associated uplands.

Drinking Water Security

EPA SEEKS APPLICATIONS FOR WATER SECURITY GRANTS

Nonprofit organizations are encouraged to apply for \$1.5 million in grants to provide technical assistance to drinking water systems that supply water to less than 50,000 people. As part of US Environmental Protection Agency's (EPA) critical water infrastructure protection initiative, awards of up to \$300,000 per eligible nonprofit organization will provide no-cost training to state, tribal or local agencies on activities such as vulnerability assessments and emergency response plans.

The US EPA Office of Water's request for applications is posted on the water security website at www.epa.gov/safewater/security, and the solicitation will also be published in the Federal Government's Business Opportunities. For further information contact Andy Bielanski at 202-564-3824.

Water Quality Cooperative Agreements

EPA OFFERS ASSISTANCE FOR INNOVATIVE WET WEATHER PROJECTS

The US Environmental Protection Agency (EPA) is soliciting Initial Proposals (IPs) from States, Tribes, local governments, universities, non-profits, and other eligible entities interested in applying for Federal assistance for Water Quality Cooperative Agreements under the Clean Water Act section 104(b)(3).

EPA intends to award an estimated \$3.1 million to eligible applicants through assistance agreements ranging in size from \$10,000 up to \$500,000 for Water Quality Cooperative Agreements, which are for unique and innovative projects that address the requirements of the National Pollutant Discharge Elimination Systems (NPDES) program with special emphasis on wet weather activities, i.e., storm water, combined sewer overflows, sanitary sewer overflows, and concentrated animal feeding operations as well as projects that enhance the ability of the regulated community to deal with non-traditional pollution problems in priority watersheds.

From the IPs received, EPA estimates that 30 to 35 projects may be selected to submit full applications.

The Agency intends to make available at least \$200,000 per year of the annual appropriation for Water Quality Cooperative Agreements, from FY 2001 through FY 2005, for projects which address cooling water intake issues to include technical and environmental studies. For FY 2003 it is expected that \$250,000 will be available for projects addressing cooling water intake issues.

EPA will consider IPs received on or before 5 p.m. Eastern Time, December 30, 2002. IPs received after the due date, may be reviewed at EPA's discretion. EPA reserves the right to reject all Initial Proposals and make no awards. For more information contact: Barry Benroth by telephone at 202-564-0672 or by e-mail at benroth.barry@epa.gov.

Brownfields

EPA OFFICIALS POINT TO CLEAN WATER ACT AS A FUNDING SOURCE

At a brownfields conference in Charlotte, NC, US Environmental Protection Agency (EPA) officials pointed to the Clean Water Act as a good source of funding for brownfields cleanup.

EPA officials referred to the Clean Water Act loan program as "the biggest environmental cleanup financing program in the country... there's tons of money out there to provide low-or no-interest loans to private or public entities seeking to assess and clean up contaminated industrial or commercial property." While states are responsible for determining restrictions on the loan program, few restrictions are placed on the money, according to EPA staff.

The \$38 billion provided by EPA for wastewater treatment plant construction is available for use in addressing nonpoint source and estuary cleanup activities. About \$1.6 billion has been provided for addressing nonpoint sources thus far.

EPA officials believe the funds could be used to “remediate mine-scarred land and to address water-supply security issues.” EPA urged states to be flexible in their uses for state revolving loan funds for brownfields purposes.

Recycling and Solid Waste

LITTER-GENERATING PRODUCTS TAXED IN NEW JERSEY; DOLLARS GO TOWARDS RECYCLING

The New Jersey Assembly Nov. 18 approved legislation requiring manufacturers, wholesalers, distributors and retailers of litter-generating products to pay a “user fee” on the sale of those products within the state to fund recycling grants to counties and municipalities and other programs. The bill is on the Governor’s desk now.

Wholesalers and distributors would be required to pay a fee of .03 percent of sales of litter-generating products, and retailers would pay .0225 percent under the measure.

Litter-generating products are defined to include beer, wine, soft drinks, tobacco products, cleaning agents and toiletries, distilled spirits, food, glass, and metal containers, groceries, tires, newsprint and magazine paper stock, drugstore sundries, paper products, and plastic containers other than those that are routinely reused.

Reauthorization of New Jersey’s litter tax, which expired at the end of 2000, would generate an estimated \$14 million to \$16 million a year. Up to \$4 million would be used to provide grants to local recycling programs. The remainder would be used to fund state and local anti-littering initiatives under the state’s Clean Communities program.

The proposed tax would be a deductible business expense for New Jersey corporation business tax purposes.

Water Infrastructure Funding

BIPARTISAN SENATE LETTER REQUESTS ADDITIONAL SRF FUNDS IN ’04 BUDGET

Senators Paul Sarbanes (D-MD) and George Voinovich (R-OH) have written a letter to President Bush, requesting \$5.2 billion for the Clean Water and Safe Drinking Water State Revolving Loan Funds in the fiscal year ’04 budget. The President’s 2003 budget set funding for these programs at \$2.1 billion.

In the letter, the Senators point out that the US Environmental Protection Agency’s water infrastructure needs report, the *GAP Analysis*, documents a \$535 billion gap between current spending and projected needs for water and wastewater infrastructure over the next twenty years if additional investments are not made.

APWA issued a Legislative Advocacy Task Force action alert November 18 urging APWA members to contact their Senators and ask them to sign onto the bipartisan Sarbanes/Voinovich letter. The letter was sent to the President November 25, 2002.

For more information about APWA’s Legislative Advocacy Task Force, visit APWA’s website at www.apwa.net and look for the Legislative Advocacy Task Force icon.

Stormwater Funding

CONGRESS AUTHORIZES STORMWATER FUNDING FROM NONPOINT PROGRAM

Congress has approved legislation allowing cities facing new stormwater control mandates to temporarily continue using Clean Water Act nonpoint source control funds to meet the requirements, despite the fact that stormwater runoff is considered a point source under rules that took effect in March, 2002. Legislation was passed November 12, 2002.

The House followed through on a deal with lawmakers, and signed off on Senate-passed Great Lakes cleanup legislation containing a Senate amendment allowing continued use of the Clean Water Act’s Section 319 monies to fund stormwater controls. Under Section 319, EPA provides funding to states to implement nonpoint source control requirements.

The amendment, sponsored by Sen. Lincoln Chafee (R-RI), allows the funds to be used for one year only to control stormwater runoff under Phase II of the stormwater rule. Continued use of the money for stormwater mandates rests on a pending EPA determination of whether the program can legally be applied to Phase II of the rule.

The measure had the support of industry and environmentalists. The President is expected to sign the measure.

Air Quality

EPA AGREES TO MAKE OZONE NON-ATTAINMENT DESIGNATIONS BY SPRING 2004

Under a proposed consent decree, the US Environmental Protection Agency (EPA) has agreed to meet an April 15, 2004 deadline to designate localities which fail to meet a stricter eight-hour ozone standard. The consent decree accelerates EPA's timeline and settles a lawsuit filed by several environmental organizations. EPA had been planning to issue designations in December 2004.

The agreement was filed November 13, 2002 and will undergo a 30-day public comment period after EPA publishes the agreement in the *Federal Register*. Currently, 291 counties are out of compliance with the eight-hour standard. A designation of non-attainment triggers requirements for affected areas to submit plans and meet deadlines for bringing their areas into compliance. Plans may include various control measures on stationary sources, such as factories or power plants, and mobile sources, such as automobiles and trucks.

EPA first promulgated the eight-hour ozone standard in 1997. It was subject to several challenges in the courts, and eventually reached the Supreme Court in 2001 (*Whitman v. American Trucking Associations*), where the standard was upheld.

NEWS FROM APWA

CALL FOR APPOINTMENTS

NOMINATIONS FOR NATIONAL COMMITTEES DUE FEBRUARY 14, 2003

APWA is currently issuing a call for appointments for the year August 2003-September 2004. President-elect Dwayne Kalynchuk will make those appointments in March and April 2003. All nominations are due in the Kansas City headquarters office by February 14, 2003. If you are interested in serving at the national level, being reappointed to a position at the national level, or wish to nominate someone for a position at the national level, you may forward those names to your chapter. Chapter representatives will then forward nominations on to headquarters.

If you wish to see a list of the positions open for appointment, including the charge to various committees/task forces and the time involvement for the volunteer in the position, please send an e-mail to Kaye Sullivan, deputy executive director at ksullivan@apwa.net.

Contributors to this month's APWA Washington Report were: Beth Denniston, Jim Fahey and Heather McTavish. The APWA Washington Report is edited by Beth Denniston.