

August 1, 2013 – VOLUME 10, ISSUE 7

House Passes Energy, Water Appropriations Bill

ACPPA's 65th Annual Meeting September 19-21, 2013

This year's annual meeting in Halifax, Nova Scotia, is just around the corner! Get up to date intelligence on what's happening in our industry and how the association is fighting for your business. For more information, contact Jen Rice at jrice@acppa.org or call 703-273-7227.

On July 10, the U.S. House of Representatives approved legislation that would provide funding for the nation's energy and water development programs in fiscal year 2014.

The Energy and Water Development and Related Agencies Appropriations Act ([H.R. 2609](#)) would provide \$30.4 billion to the Energy Department, the Army Corps of Engineers, the Bureau of Reclamation, and other related agencies. The legislation is \$2.9 billion less than 2013 appropriated levels, with cuts made possible by agency consolidations and rolling back government regulations.

The bill contains a provision (Section 203) with potential consequences for the concrete pressure pipe industry. It specifies that:

the Bureau of Reclamation shall not deny approval, funding, or assistance to any project, nor disqualify any material from use, based, in whole or in part, on the corrosion control used, if the corrosion control meets the requirements of a published national or international standard promulgated by the American Water Works Association ('AWWA'), ASTM International, the American National Standards Institute ('ANSI'), NACE International ('NACE') or the American Society for Testing and Materials ('ASTM'). The Bureau shall allow any project initiated during the study to use any corrosion control meeting the above standards.

That rule would remain in place "until the pipeline reliability study required in the Consolidated Appropriations Act, 2012, is completed, and any necessary changes are made to Technical Memorandum No. 8140-CC-2004-1."

The report accompanying the bill explains that the Appropriations Committee is concerned that "Reclamation's level of reliance on this memorandum may be holding different materials to different standards of reliability and increasing project costs unnecessarily. The Committee again clarifies that the vague--and in practice seemingly lengthy--deviation process mentioned in Reclamation Manual Policy, Performing Designs and Construction Activities, FAC P03 is not sufficient to avoid the perception of use of the memorandum as the 'sole basis' for decisions."

The report also directs Reclamation to report to Congress within 30 days of enactment of the bill with a detailed plan for complying with an earlier congressional mandate on pipeline reliability and requires the assembly and analysis of related data be conducted by an “appropriate independent third-party.”

The language was apparently included at the request of the ductile iron pipe industry to put that product in a stronger position on Reclamation projects. However, on its face, the provision is material-neutral and could be read to bar discrimination against concrete pressure pipe as well as ductile. ACPPA has not yet taken a public position on the provision. We invite members to comment (by sending an email to caklein@potomac-law.com) and share insights about consequences of the pipeline language for our industry.

On the other side of Capitol Hill, the Senate is currently considering its version of the bill, [S. 1245](#), which provides \$34.5 billion, increases investment in renewables and energy efficiency programs by 25 percent, and also contains the corrosion standards language.

The Senate is unlikely to approve the House legislation, which President Obama threatened to veto. However, some version of an energy-water appropriations bill will likely be included in an omnibus year-end continuing appropriations resolution.

Earlier this year, the Senate passed Water Resources Development Act legislation ([S. 601](#)) to reauthorize Army Corps dam, flood control, and other infrastructure projects. ACPPA and its allies are urging House members to vote on parallel legislation so a final bill can be signed into law by the end of the year.

Educate your lawmakers about the importance of making water infrastructure investment a top priority by using the grassroots tools available on ACPPA-action.org.

Engineering a Win for WRDA

Actionline recently sat down with Caroline Sevier, senior manager of federal government relations at the American Society of Civil Engineers (ASCE), and a leading advocate for the Water Resources Development Act (WRDA), to learn about how this legislation will impact construction markets.

Actionline: Caroline, we’re currently waiting on the House to consider its version of WRDA, which will presumably be different from the Senate’s bill ([S. 601](#)) that passed with resounding bipartisan support on May 15. Can you tell us what ASCE believes are the most important provisions contained in the Senate’s WRDA legislation?

Sevier: ASCE was pleased to see several of our priorities for WRDA included in the bipartisan, \$12 billion Senate bill. These priorities include the reauthorization of the National Dam Safety Program, the creation of a National Levee Safety Program, the eventual move toward trust in the Harbor Maintenance Trust Fund, and reforms to accelerate project review and delivery.

Actionline: What’s causing the House to lag so far behind the Senate in moving forward on this important legislation?

Sevier: For starters, the Senate had more time to work on developing a WRDA bill because Environment & Public Works Committee Chairman Barbara Boxer (D-Calif.) began work already last Congress. House Transportation & Infrastructure Committee Chairman Bill Shuster (R-Pa.) did not have that luxury, only acquiring the gavel this past January. While industry experts now believe the House has completed its draft WRDA bill, they are still waiting on floor time before it is introduced and marked up by the committee. A crowded legislative calendar this year requires considerable effort by House leadership to carve out time for WRDA.

Actionline: ASCE's "[2013 Report Card for America's Infrastructure](#)" gave the nation's ports the grade of a "C," while dams received a "D," and inland waterways and levies both earned a "D-." The report card also estimated the nation's drinking water and wastewater infrastructure requires more than \$1 trillion in investment over 20 years, giving both a "D" (poor and mostly below standard). To what extent will WRDA narrow that gap?

Sevier: According to ASCE's report, "[Failure to Act: The Economic Impact of Current Investment Trends in Airports, Inland Waterways, and Marine Port Infrastructure](#)," investment needs in the nation's marine ports and inland waterways sector will total \$30 billion by 2020, while planned expenditures are less than half that amount. Meanwhile, costs attributable to delays in the nation's inland waterways system were \$33 billion in 2010. This cost is expected to increase to nearly \$49 billion by 2020. The Water Resources Development Act is a step toward narrowing that investment gap.

The Senate legislation finally sets a timeline to direct funds from the Harbor Maintenance Trust Fund to their intended purpose – dredging and maintaining the harbors. Currently, only half of those funds go to maintenance. Additionally, the Senate bill would reauthorize the National Dam Safety Program, which expired in Sept. 2011, allowing states to receive federal funds to make their programs more robust.

However, the most critical aspect of WRDA regarding improved grades would be the creation of a National Levee Safety Program. Even eight years after Hurricane Katrina devastated the Gulf coast, no national safety program exists for federal or state levees. While the Federal Emergency Management Agency and the U.S. Army Corps of Engineers have made great strides in creating an inventory of the location of the nation's levees, the conditions of many of these levees are worse than originally expected. It is through WRDA that Congress can take action to enact federal legislation to protect the health and welfare of American citizens from the catastrophic effects of levee failures. The act should require the federal and state governments to conduct mandatory safety inspections for all levees and complete a national inventory of levees.

Actionline: When last reauthorized in 2007, WRDA contained hundreds of earmarks. However, both chambers now have rules banning earmarks from legislation. How did the Senate bill circumvent these requirements and how is the House approaching the challenge?

Sevier: ASCE has maintained that Army Corps of Engineers projects are authorizations that have been studied for years, sometimes decades, and therefore do not fall under the label of congressional earmarks. Regardless, Congress has allowed the restrictive earmark ban to hold up WRDA. While the House has yet to reveal publicly how they will handle the congressionally mandated earmark ban, the Senate did take steps to authorize Army Corps of Engineers projects without directly naming them in the legislation. Instead

of including a specific list of local projects to be funded, the bill authorizes the Corps to take on any project referred to the Chief of Engineers by the time the bill takes effect. This language would take the project selection process out of the hands of Congress and place it under the sole discretion of the Corps of Engineers.

Actionline: What can water infrastructure advocates, like the members of ACPPA, do to convince lawmakers in the House to take immediate action to pass WRDA?

Sevier: It is vitally important that ACPPA members communicate regularly with their elected officials on issues that affect their profession like infrastructure renewal. Water infrastructure advocates need to educate their members of Congress about why WRDA is important to the people and communities in their districts. Our nation's water resources are critical to the economy, infrastructure, public safety, and the preservation and enhancement of our environmental resources. Therefore, WRDA is not legislation concerning just those members of Congress that represent coastlines and port communities. Personal stories about the importance of our nation's waterways to jobs and families make a clear case about why WRDA must be passed in the 113th Congress.

ACPPA would like to thank Caroline Sevier for taking the time to share her insights. To encourage your lawmakers to make investments in water infrastructure a top priority, be sure to visit ACPPA-action.org.

Coal Ash Bill Flies through House

On July 25, the U.S. House of Representatives passed bipartisan legislation introduced by Rep. David McKinley (R-W.Va.) encouraging the recovery and beneficial use of coal combustion residuals. Most of the Republican caucus was joined by 39 Democrats supporting the bill.

The Coal Residuals Reuse and Management Act ([H.R. 2218](#)) gives states the authority to set their own standards for the disposal of coal ash with oversight by the Environmental Protection Agency (EPA), while protecting human health and the environment.

Importantly, H.R. 2218 precludes the EPA from classifying coal ash as a "hazardous material," which would impose significant compliance costs on manufacturers, power generators, and consumers of electricity. The legislation also requires facilities producing coal residuals to monitor groundwater for contamination and sets deadlines for meeting groundwater protection standards.

The bill now moves to the Senate for consideration, where a similar bill has not yet been introduced. Last Congress, Sen. John Hoeven (R-N.D.) led unsuccessful efforts to push coal ash legislation through the upper chamber ([S. 3512](#)).

Keep an eye on the association as the story develops.

House, Senate Introduce TRIP Bond Legislation

On June 27, Rep. Ed Whitfield (R-Ky.) and Sen. Ron Wyden (D-Ore.) introduced bicameral legislation that would provide \$50 billion over six years for new transportation infrastructure bonds.

The Transportation and Regional Infrastructure Projects (TRIP) bill ([H.R. 2534](#); [S. 1250](#)) would empower states and local government to complete significant new projects across all modes of transportation, including roads, bridges, transit, rail, and waterways. Such bonds would play an important role in ensuring continued investment in our nation's transportation network, especially given Congressional Budget Office [testimony](#) on July 24 before the Senate Environment & Public Works Committee stating the Highway Trust Fund will be unable to meet all of its funding obligations in 2015 without congressional action.

According to industry experts, TRIP bonds will generate significant economic growth, improve transportation infrastructure, and save lives through enhanced transportation safety without adding to the national deficit. The bonds would generate \$160.5 billion in economic output (GDP) over a 20-year period and produce many jobs

ACPPA looks forward to working with lawmakers to help enact these important bills, but will emphasize to Congress that TRIP bonds are supplemental to, not a substitute for, ensuring the long-term solvency of the federal highway program.

To urge your lawmakers to find new revenue streams for the Highway Trust Fund, visit [ACPPA-action.org](#).

ACA Employer Mandate Penalty Postponed Till 2015

On July 2, the Obama administration [announced](#) the employer mandate portion of the Affordable Care Act ([Public Law 111-148](#)) will be delayed one year, until Jan. 1, 2015. The White House says it will use that time to simplify and streamline the reporting process, while allowing businesses more time to understand and plan for the implementation of the mandate.

The postponed provision requires businesses with 50 or more "full-time equivalent" employees to offer "affordable," "minimum essential" health coverage to individuals working more than 30 hours per week, or be subject to tax penalties.

Meanwhile, enrollment in the health insurance marketplace will still be available starting Oct. 1, 2013, though it remains unclear who will be eligible for government subsidies on plans as employers will not yet be required to report their coverage. The individual mandate, which requires most Americans to have insurance to avoid a tax penalty, will also begin on the original date, Jan. 1, 2014.