

JURISDICTION AND ACTIVITIES
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
110TH CONGRESS

January 2007

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I. EXECUTIVE SUMMARY

The jurisdiction of the Subcommittee on Water Resources and Environment consists generally of matters relating to water resources development, conservation and management, water pollution control and water infrastructure, and hazardous waste cleanup.

Issues under the Water Resources and Environment Subcommittee include:

- Water resources programs (projects and regulations) – U.S. Army Corps of Engineers (Corps)
- Clean Water Act, water infrastructure and watershed protection programs – Environmental Protection Agency (EPA)
- Superfund and brownfields revitalization (EPA)
- Ocean dumping – Corps and EPA
- Oil pollution – EPA and U.S. Coast Guard
- Tennessee Valley Authority
- Saint Lawrence Seaway Development Corporation (US. Department of Transportation).
- the small watershed program of the Natural Resources Conservation Service (U.S. Department of Agriculture)
- Deepwater ports – EPA, Coast Guard, Corps
- Invasive/aquatic nuisance species – EPA, Coast Guard, Corps, and other agencies
- Coastal pollution and coastal zone management – EPA and National Oceanic and Atmospheric Administration (NOAA)
- Natural resource damages – NOAA, Interior, and other agencies
- Groundwater protection – EPA and Corps
- Water resources policy – multiple agencies

II. U.S. ARMY CORPS OF ENGINEERS WATER RESOURCES PROGRAMS

A. Studies and Projects

1. General Procedures

The U.S. Army Corps of Engineers constructs projects for the purposes of navigation, flood control, hurricane and storm damage reduction and shoreline protection, hydroelectric power, recreation, water supply, environmental infrastructure, environmental protection, restoration and enhancement, and fish and wildlife mitigation.

The first step in a Corps water resources development project is a study of the feasibility of the project. If the Corps has done a study in the area before, the new study can be authorized by a resolution of either the Committee on Transportation and Infrastructure or the Senate Committee on Environment and Public Works. If the area has not been previously studied by the Corps, then an Act of Congress is necessary to authorize the study. The majority of studies are authorized by Committee resolution.

The next step is the funding of the study by the Appropriations Committee in the Energy and Water Development Appropriations bill. The Corps first performs a reconnaissance study at Federal expense, at a cost not to exceed \$100,000. Reconnaissance studies determine whether there is a Federal interest in addressing a given water resource problem or opportunity, identify the non-Federal interest that will participate in cost-sharing of the project, and typically take one year to complete. If a reconnaissance study indicates that there may be a viable Federal project and that a more detailed study should be undertaken, the Corps prepares a feasibility report, the cost of which is shared 50 percent by the Federal Government and 50 percent by the non-Federal interest.

After a full study is completed, the results and recommendations of the study are submitted to Congress, usually in the form of a report of the Chief of Engineers. If such results and recommendations are favorable, the next step is authorization. Project authorizations are contained in water resources development acts which are traditionally enacted on a biennial schedule. The final step after authorization is funding of project construction by the Appropriations Committee in the Energy and Water Development Appropriations bill.

2. Continuing Authority Programs for Small Projects

The Corps of Engineers also has certain authorities to construct small projects without specific authorization by Congress. These authorities, collectively known as the "continuing authorities program," include: (1) beach erosion control projects with a Federal cost of not more than \$3 million, (2) navigation projects with a Federal cost of not more than \$4 million, (3) flood control projects with a Federal cost of not more than \$7 million, (4) streambank and shoreline protection for public facilities projects with a Federal cost of not more than \$1 million, (5) projects to mitigate shoreline damages from Federal navigation projects with a Federal cost of not more than \$5 million, (6) projects of snagging and clearing for flood control with a Federal cost of not more than \$500,000, (7) projects modifying the structure and operation of existing projects for improvement to the environment with a Federal cost of not more than \$5 million, and (8) projects for the restoration and protection of aquatic ecosystems with a Federal cost of not more than \$5 million. When project costs are relatively small, the continuing authorities program offers an

attractive alternative to specifically authorized work because it involves an abbreviated approval process.

3. Cost Sharing

The Water Resources Development Act of 1986, P.L. 99-662, as amended, contains the cost sharing provisions, that are generally applicable to Corps of Engineers water resources projects.

Harbor development projects

For harbor development projects, non-Federal interests are required to pay 10 percent of project construction costs to depths of 20 feet or less; 25 percent of project construction costs for depths greater than 20 feet but not more than 45 feet; and 50 percent of project construction costs for depths greater than 45 feet. Since 1996, project construction costs include costs associated with dredged material disposal facilities. In addition, the non-Federal interest must pay 10 percent of the cost (with interest) of general navigation features over a period not to exceed 30 years and provide all lands, easements, rights of way, and relocations necessary for project construction and maintenance. The cost of the lands, easements, rights of way, and relocations is credited against the additional 10 percent paid following construction.

Operation and maintenance costs are 100 percent Federal for work associated with depths not greater than 45 feet and 50 percent Federal for additional costs of maintaining depths greater than 45 feet. The Federal share of operation and maintenance is appropriated from the Harbor Maintenance Trust Fund. The Trust Fund was created in 1986 and consists of receipts from a 0.125 percent tax imposed on the value of cargo loaded or unloaded at U.S. ports. On March 31, 1998, the Supreme Court ruled that the tax on cargo that supports the Harbor Maintenance Trust Fund is unconstitutional insofar as it applies to exports. The tax on imports continues to be collected.

Inland waterways transportation projects

The construction and major rehabilitation of inland waterways transportation projects is funded 50 percent from the Inland Waterways Trust Fund, with the balance from general revenues. The Inland Waterways Trust Fund consists of revenues generated from a tax on inland waterways fuel. The tax rate for the Trust Fund has been 20 cents per gallon since January 1, 1995.

Operation and maintenance of the inland waterways system are 100 percent Federal from general revenues.

Flood damage reduction projects

For flood damage reduction projects (previously called flood control projects), structural projects require a minimum non-Federal share of 35 percent (25 percent for projects authorized before October 12, 1996) and a maximum of 50 percent. Non-structural projects require a fixed 35 percent non-Federal share. The non-Federal interest must pay at least 5 percent in cash of the costs of each project assigned to flood damage reduction during construction and provide lands, easements, rights of way, relocations and dredged material disposal areas necessary for flood damage deduction. Additional cash is required to be paid during construction if the local non-cash contribution of lands, easements, rights of way, relocations and dredged material disposal areas, and the mandatory 5 percent cash contribution do not equal 35 percent (or 25 percent, depending on the date of project authorization), but the non-Federal contribution is always limited to 50 percent of project costs assigned to flood damage reduction.

With the exception of the main-line levees within the Mississippi Rivers and Tributaries program, operation and maintenance of flood control projects are a non-Federal responsibility.

Hurricane and storm damage reduction and shoreline protection projects

The cost of initial construction for hurricane and storm damage reduction and shoreline protection projects that protect public lands or privately owned lands with appropriate public access is cost-shared at 35 percent with non-Federal interests. The cost of construction on non-Federal public lands used for parks and recreation is cost-shared at 50 percent, and on Federal lands, the cost is 100 percent Federal.

The costs of periodic nourishment of projects on privately owned lands ranges from 35 percent non-Federal costs for projects authorized on or before December 31, 1999, to 50 percent non-Federal costs for projects authorized after this date where the periodic nourishment is carried out after January 1, 2003.

Environmental restoration and protection projects

For environmental (ecosystem) restoration and protection, the non-Federal share of construction is 35 percent of total project costs. Operation and maintenance of such projects is a non-Federal responsibility.

Water supply, recreation, and aquatic plant control

For municipal and industrial water supply (drinking water), the non-Federal share of project costs is 100 percent, repaid over time. For agricultural water supply (irrigation), the non-Federal share is 35 percent, repaid over time. For recreation features, the non-Federal share of the cost of construction is 50 percent of the separable costs allocable to recreation, and for recreational navigation, 50 percent of joint and separable costs. Operation and maintenance of water supply and recreation projects are a non-Federal responsibility.

The Corps may also participate with other Federal and non-Federal agencies for aquatic plant control of major economic significance. The costs of site-specific aquatic plant control efforts are shared with non-Federal interests at 50 percent.

Environmental infrastructure

Since 1992, the Corps of Engineers has been involved in the planning, design, and construction of environmental infrastructure projects for drinking water and wastewater. Environmental infrastructure projects constructed by the Corps are cost-shared with the non-Federal interest responsible for 25 percent of the total costs.

4. Activities in the 109th Congress

In the 109th Congress, the Committee acted on the following bills.

H.R. 2864, the Water Resources Development Act of 2005, authorized, modified, reauthorized and deauthorized various Corps of Engineers' water resources projects and authorized studies involving, among other things, navigation, flood control, environmental restoration, shore protection, hydropower, water supply, and recreation. The bill also included various policy initiatives and regional programs and other revisions to the Corps' existing water resources program.

On July 14, 2005, the House of Representatives passed H.R. 2864. On July 19, 2006, the Senate approved H.R. 2864 with a substitute amendment. On September 13, 2006, the House approved a motion to go to conference with the Senate, and on September 19, 2006, the Senate agreed to a conference. The 109th Congress adjourned before the joint House-Senate conference committee completed its work on this legislation, and no further action was taken on the bill.

S. 1140, to designate the State Route 1 Bridge over the Chesapeake and Delaware Canal in the State of Delaware as the “Senator William V. Roth, Jr. Bridge”. The Senate passed S. 1140 on June 15, 2005, and the House of Representatives passed the bill on November 13, 2006. S. 1140, which became Public Law 109-381.

H.R. 4650, the National Levee Safety Program Act of 2006, required the Corps to produce an inventory of levees in the United States, provided incentives for States to develop their own levee safety programs, and established an Interagency Committee on Levee Safety to create standards for Federal levees. The Subcommittee held a hearing on H.R. 4650 on April 6, 2006, and on July 28, 2006, the Committee reported the bill favorably to the House of Representatives (House Report 109-609). The joint House-Senate conference committee on H.R. 2864, the Water Resources Development Act of 2005, considered including H.R. 4650 as part of the larger water resources bill. No further action was taken on H.R. 4650.

The Subcommittee also conducted oversight on certain Corps of Engineers projects, as well as the budget and policy priorities of the Corps of Engineers.

B. Regulatory Program

1. Section 404 program

The Corps of Engineers has primary responsibility for regulating activities in and the disposal of dredged or fill material into the “navigable waters of the United States” under several laws.

Under section 10 of the Act of March 3, 1899, any alteration of, dredging in, or erection of any structure such as a wharf, pier, or dock in a traditionally-navigable waterway, requires a permit from the Secretary of the Army.

Under section 103 of the Ocean Dumping Act, the transportation of dredged or other material for the purpose of dumping the material into the oceans requires a permit from the Secretary of the Army. The permits are issued pursuant to guidelines developed by EPA. Ocean dumping is discussed in more detail in section IV.

Section 404 of the Clean Water Act provides that any person who discharges dredged material or fill material into the navigable waters, defined as including the “waters of the United States”, must have a permit from the Secretary of the Army. Unlike section 10 of the Act of March 3, 1899, under the Clean Water Act, the term “navigable waters” is not limited to the “traditionally-navigable waters”, but is broadly defined to include a wide array of water bodies, including wetlands. The Environmental Protection Agency, in conjunction with the Corps, develops guidelines for the issuance of section 404 permits and has authority to review and deny permits where the discharge

will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

Waters of the United States include wetlands, which generally include swamps, marshes, bogs, and similar areas (which may often appear as dry land). To be considered a wetland, an area must meet three characteristics: 1) presence of hydric soils; 2) presence of vegetation typically adapted for life in saturated soil conditions; and, 3) presence of water in the root zone sufficient to create anaerobic conditions for a designated period. Section 404 is the primary Federal law for the regulation of activities occurring in wetlands.

2. Wetlands Protection

Wetlands provide nationwide benefits by lessening flood damage, reducing erosion, recharging groundwater, filtering sediment, and abating pollution. Wetlands also sustain nearly one-third of the nation's endangered and threatened species. They provide breeding and wintering grounds for waterfowl and shorebirds.

U.S. Fish and Wildlife Service has estimated that over one-half of the wetlands existing in the lower 48 states at the time of European settlement no longer exist. In 1988, the National Wetlands Policy Forum recommended, and President George H. W. Bush endorsed, an interim goal of no overall net loss of remaining wetlands as defined by acreage and function, and a long-term goal to increase the quantity and quality of the nation's wetlands.

The Clean Water Act Section 404 permit program regulates the discharge of dredged and fill material, and is the leading federal program protecting the remaining wetland base. The Water Resources Development Act of 1990 also includes, as part of the Corps' water resources development program, an interim goal of no overall net loss of the nation's remaining wetlands base as defined by acreage and function, and a long term goal of increasing the quality and quantity of the nation's wetlands through a wetlands protection plan.

3. Recent Federal court decisions

In June 1998, the U.S. Court of Appeals for the District of Columbia Circuit ruled the Corps of Engineers had no authority under the Clean Water Act to regulate incidental fallback that occurs during dredging operations. On January 17, 2001, the Corps and EPA published in the Federal Register changes to the definition of "discharged material" to respond to the Court's decision.

In January 2001, the U.S. Supreme Court ruled that the Corps' jurisdiction over certain isolated waters and wetlands based solely upon the use of such waters by migratory birds exceeded its authority under the Clean Water Act.

In June 2006, the Supreme Court issued a second decision related to the scope of the Clean Water Act over non-navigable waters and tributaries, including associated wetlands; however, this decision contained no controlling majority opinion altering the scope of the Act. Yet, this decision (*Rapanos et ux., et al. v. United States*) created uncertainty concerning Federal authority over non-navigable waters, including wetlands, and in the absence of additional clarification, jurisdictional

determinations will be substantially made on an *ad hoc* basis, and could increase the likelihood of litigation.

4. Activities in the 109th Congress

The Subcommittee conducted two hearings on budget and policy priorities of the Corps of Engineers, including the Corps' regulatory program, but conducted no oversight on the impacts of recent judicial decisions on the Corps' implementation of the section 404 program.

Congress also enacted three short-term extensions of the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to process permits under the Clean Water Act and the Rivers and Harbors Act of 1899. H.R. 3765, which extended this authority through March 31, 2006, became Public Law 109-99. H.R. 4826, which extended this authority through December 31, 2006, became Public Law 109-209. H.R. 6316, which extended this authority through December 31, 2008, became Public Law 109-434.

C. Water Infrastructure and Watershed Protection

Much attention has been given to the role the Corps of Engineers might play in addressing the environmental infrastructure and watershed protection needs of the nation. Communities are seeking Federal assistance to help address inadequate or aging wastewater treatment facilities and sewer overflow problems. Water Resources Development Acts have included specific authorizations for the Corps to help communities address these problems.

1. Activities in the 109th Congress

The Water Resources Development Act of 2005, as passed the House of Representatives, included several authorities for the Corps of Engineers to carry out environmental infrastructure projects.

III. ENVIRONMENTAL PROTECTION AGENCY (EPA)

A. Clean Water Act Program

The Federal Water Pollution Control Act (commonly known as the Clean Water Act), as amended in 1972 by P.L. 92-500, in 1977 by P.L. 95-217, in 1981 by P.L. 97-117, and in 1987 by P.L. 100-4, provides for a major Federal-state program to protect, restore, and maintain the quality of the nation's waters. EPA has the primary responsibility for carrying out the Act but significant parts of the program may be administered by states if approved by EPA.

The Act generally has two major areas of emphasis: regulatory provisions that impose progressively more stringent requirements on industries and municipalities to reduce or eliminate the discharge of pollutants and that regulate the discharge of dredged or fill materials into wetlands, and funding provisions that authorize Federal financial assistance for municipal wastewater treatment plant construction. Additional areas emphasize planning and financial and technical assistance for various regions and issues.

The Act establishes a goal of eliminating the discharge of pollutants into navigable waters of the United States by 1985 with an interim goal of attaining water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983. "Navigable waters" is defined in the Act as "waters of the United States, including the territorial seas" – a term that is interpreted to include various non-navigable tributaries and wetlands.

The Act recognizes two distinct pathways in which pollutants are introduced into the nation's waters – point sources of pollution, and non-point sources of pollution. Point sources are defined by the Act as "any discernable, confined and discrete conveyance . . . from which pollutants are or may be discharged," including pipes, ditches, conduits, and channels, and are regulated under the National Pollutant Discharge Elimination System (section 402). Non-point sources of pollution include all remaining sources outside the definition of a point source, such as precipitation runoff from farms, fields, household lawns, and golf courses. The Act does not formally regulate non-point sources of pollution, but provides financial incentives to encourage states to address and control these sources of pollution (section 319).

1. The National Pollutant Discharge Elimination System

As a step toward achieving these goals and implementing this policy, the Act imposes technology-based discharge control requirements on industrial and municipal dischargers. Industries must meet various standards based on the type of pollutant discharged and the age of the facility (*e.g.*, "best available technology economically achievable"). For municipalities, secondary treatment (defined in regulation as an 85 percent reduction in certain conventional pollutant concentrations as well as maintaining pH levels within a certain range) must be achieved. Additional limitations may also be imposed on dischargers where pollution levels in receiving waters continue to be too high to protect designated uses; this is accomplished through water quality based effluent limitations.

EPA is responsible for defining what the required level of treatment is for municipalities and for each type of industry to meet EPA's standards. EPA also must develop water quality criteria, specifying the maximum concentrations of pollutants permitted for different designated uses of waters.

These requirements are implemented and enforced through permits. All point source dischargers that discharge pollutants directly into navigable waters must obtain a permit for that discharge either from EPA or a state, if the state has an EPA-approved permitting program. Currently, 45 states and the U.S. Virgin Islands have approved permitting programs. Permits are based on both technology requirements and water quality impacts, and set the concentration and amount of pollutants allowed to be discharged. Several provisions in the Act provide for time extensions and modifications of these requirements upon a satisfactory showing that specified conditions exist to justify the extension or modification.

A state may exercise its own permit program in lieu of the Federal program if it meets specified requirements, such as the requirement to develop water quality standards. Water quality standards consist of a designated use for a body of water, such as fishable and swimmable, suitable for spawning, or drinking water source; criteria for the amounts of various pollutants which will permit and sustain that use; and a policy to prevent or minimize degradation of water quality. The

Act require states to adopt water quality criteria (as part of a water quality standard) for any toxic pollutant for which EPA has developed criteria, the discharge or presence of which in the affected water body could reasonably be expected to interfere with the designated uses of the water body. States can use either EPA developed water quality criteria or different ones if the state can demonstrate to EPA that the different criteria are justified in the particular case. States are to adopt these criteria whenever they review their water quality standards, which must occur at least every three years.

For water bodies not meeting water quality standards following implementation of technology-based controls, more stringent limitations on dischargers may be imposed to protect the quality of the receiving waters.

Indirect dischargers, those entities that discharge to publicly owned treatment works (POTW) rather than directly to navigable waters, must meet treatment standards similar to those established for direct industrial discharges since POTWs traditionally are designed primarily for the treatment of domestic sewage. Pretreatment requirements, authorized in section 307 of the Act, are either enforced by the POTW or by state or Federal authorities.

Section 402(p) of the Act establishes a program for regulating stormwater dischargers. This “phased-in, tiered” approach requires large and medium municipal and most industrial dischargers to obtain permits by EPA or state permitting authorities. The first phase, or Phase I, required permits from larger stormwater dischargers, including municipalities generally serving populations of 100,000 or more, and several categories of industrial activities, including construction activities affecting five or more acres of land. Phase II of the stormwater program extended the permitting requirements to smaller municipalities, and construction activities affecting between one and five acres. The Phase II stormwater requirements went into effect on March 10, 2003.

The Act regulates discharges from concentrated animal feeding operations (CAFOs). CAFOs are typically large agricultural operations where animals are kept and raised in confined situations. These operations generally congregate animals, feed, manure, dead animals, and production operations on a small land area. Animal waste and wastewater can enter water bodies from spills or breaks of waste storage structures, and excessive application of manure to crop land. Operations that meet EPA’s regulatory definition of a CAFO may be regulated under the NPDES system.

The law includes several different enforcement provisions, authorizing administrative, civil, and criminal penalties, as well as citizen suits.

2. Non-point sources of pollution

To address nonpoint sources of pollution, including runoff from farms, urban areas, construction sites, and forests, states are required under section 319 to develop management programs for identifying and controlling nonpoint pollutant sources.

Section 319 also provides Federal financial assistance, in the form of grants, to encourage and assist states in the control of nonpoint sources of water pollution. The provision requires states to identify areas not meeting water quality standards because of nonpoint sources of pollution and to develop programs, as necessary, if states are to receive implementation grants. Notwithstanding

the expiration of the authorization for grants, the nonpoint source program has continued to receive appropriations for state implementation efforts. For fiscal year 2006, the nonpoint source program received an appropriation of \$207 million.

3. Wastewater infrastructure financing

Titles II and VI of the Clean Water Act provide authority for grants to States and municipalities and the establishment of clean water state revolving loan funds, respectively, for the construction of treatment works.

The Construction Grants program contained in Title II was phased out in favor of state revolving funds in the Water Quality Act of 1987 (P.L. 100-4). Congress appropriated approximately \$60 billion over the life of the Construction Grants program.

The Clean Water State Revolving Fund (CWSRF) was authorized in the Water Quality Act of 1987. Through the CWSRF program, each state and Puerto Rico maintain revolving loan funds to provide low-cost financing for approved water quality infrastructure projects. Funds to establish or capitalize the CWSRF programs are provided through federal capitalization grants and state matching funds (equal to 20 percent of federal government grants). Since 1987, Congress has appropriated more than \$24 billion in capitalization grants. CWSRF revenues also include receipts from the sale of bonds, loan repayments, and interest earnings. From all sources, more than \$55 billion has been deposited into the state revolving funds.

The SRFs are available to make low-interest loans, buy or refinance local debt, subsidize or insure local bonds, make loan guarantees, act as security or guarantee of state debt, earn interest, and pay administrative expenses. All projects must ensure maintenance of progress toward the goals of the Act and meet the standards and enforceable requirements of the Act.

SRF monies also may be used to implement other water pollution control programs such as nonpoint source pollution management and national estuary programs. EPA has approved 57 states and territories for funding under the SRF program. Through fiscal year 2005, SRFs have provided \$52.7 billion in loans for wastewater projects, including \$4.9 billion in loans in 2005 alone.

EPA, the Congressional Budget Office (CBO), and a coalition of industry and other interested stakeholders, all have estimated that significant increases in investments are needed to address wastewater needs over the next 20 years. These estimates fall between CBO's low-cost estimate of a \$3.2 billion annual gap, and CBO's high-cost estimate of an \$11.1 billion annual gap. Until recently, the CWSRF program had received between \$1.1 and \$1.5 billion a year from Federal appropriations. In recent years, appropriations to the CWSRF have been drastically reduced, and in fiscal year 2006, the appropriated amount for the program was less than \$900 million. In addition, more than \$3.4 billion a year is provided to the SRFs through the state match, leveraged bonds, loan repayments, and interest earnings.

4. Other Clean Water Act authorities

The Clean Water Act contains several targeted programs and authorities that were designed to improve water quality throughout the United States.

The National Estuary Program authorizes Federal financing for the development and implementation of comprehensive conservation and management plans for improving the overall ecological health of the nation's estuaries. Section 320 of the Act designates 28 priority estuaries eligible for priority consideration under the National Estuary Program.

The Clean Lakes Program, established under section 314, authorizes financial and technical assistance to States in restoring publicly-owned lakes. The program has funded a total of approximately \$145 million of grant activities since 1976 to address lake problems but there have been no appropriations for the program since 1994.

The Act also authorizes several targeted programs for improving regional water quality:

- Section 117 authorizes funding for the operation of EPA's Chesapeake Bay Program Office;
- Section 118 authorizes funding for EPA's Great Lakes National Program Office;
- Section 119 authorizes funding for EPA's Long Island Sound Office;
- Section 120 authorizes funding for the Lake Champlain Management Conference;
- Section 121 authorizes funding for EPA's Lake Pontchartrain Basin Restoration Program; and
- Section 122 authorizes funding for technical assistance and grants to carry out pilot projects for watershed management of wet weather discharges and stormwater best management practices.

5. Activities in the 109th Congress

The Committee considered several bills related to Clean Water Act programs during the 109th Congress:

H.R. 3963, reauthorizes appropriations for the Long Island Sound program through 2010. The bill became Public Law 109-137.

H.R. 5160 establishes the Long Island Sound Stewardship Initiative and Advisory Committee to identify, protect, and enhance sites in Connecticut and New York, within the Long Island Sound watershed, that have significant ecological, educational, open space, public access, or recreational values. The bill directs EPA to review the advisory committee's recommendations, approve stewardship sites, award grants, and report annually on the Initiative. The bill became Public Law 109-359.

H.R. 6121 reauthorizes appropriations for the Lake Pontchartrain Basin Restoration Program through fiscal year 2011. Under the Lake Pontchartrain Basin Restoration Program, EPA may provide up to \$20 million a year in assistance for restoration projects and studies and public education relating to restoring the ecological health of the Basin. The bill became Public Law 109-392.

H.R. 1721 would have reauthorized appropriations for EPA's BEACH program, a program to improve the quality of coastal recreation waters to ensure safe beaches for swimming and other recreation activities. The bill reauthorized \$30 million in appropriations through 2011. The House considered H.R. 1721 under suspension of the rules and passed it by voice vote on December 7, 2005 (House Report 109-292). No further action was taken on the bill.

H.R. 624 would have reauthorized appropriations for EPA's Sewer Overflow Control grants program, established by section 221 of the Clean Water Act. The bill reauthorized \$1.5 billion in grants to municipalities and States to address sewer overflows. The Committee on Transportation and Infrastructure reported the bill favorably to the House of Representatives on May 18, 2005 (House Report 109-166). No further action was taken on the bill.

H.R. 1359 would have reauthorized appropriations for Federal grants for alternative water source projects. These grants, administered by EPA, could be used by communities to meet critical

water supply needs through reclamation, reuse, and conservation. H.R. 1359 authorized a total of \$125 million for this purpose through 2010. The Committee on Transportation and Infrastructure reported the bill favorably to the House of Representatives on May 18, 2005 (House Report 109-167). No further action was taken on the bill.

H.R. 4126 would have reauthorized appropriations for EPA's Chesapeake Bay Program through 2011. The bill required EPA to report biennially on progress being made towards improving the ecological health of tributaries within the Chesapeake Bay watershed. H.R. 4126 increased the authorization for the program to \$50 million annually through 2011. The Transportation and Infrastructure Committee ordered the bill favorably reported to the House of Representatives on September 20, 2006. No further action was taken on the bill.

In addition, the Subcommittee conducted oversight on many Clean Water Act matters, including infrastructure needs, regional water quality problems and programs, and the practice of bypassing certain elements of secondary treatment (often referred to as wastewater blending) during wet weather conditions, as well as the budget and priorities of EPA's Office of Water.

B. Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, commonly referred to as Superfund, was enacted to develop a comprehensive program to clean up the nation's worst abandoned or uncontrolled hazardous waste sites. The EPA has primary responsibility for carrying out this Act. The law requires that responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving hazardous substances. In addition, the law is designed to advance scientific and technological capabilities in all aspects of hazardous waste management, treatment, and disposal.

Superfund is a response to hazardous waste horror stories of the late 1970s, such as those involving Love Canal, a community in Niagara Falls, New York, and Times Beach, Missouri. Superfund was enacted in 1980 as a \$1.6 billion five-year program to address the nation's hazardous waste problem. In recognition both of the enormity of the problem and the importance of the Superfund program to address hazardous waste sites, in 1986, Superfund was reauthorized in legislation that authorized the program at \$8.5 billion over five years. The taxes that funded the program were extended in 1990, but they expired on December 31, 1995, and have not been reinstated.

The Superfund trust fund obtained its revenue from several sources: a tax on crude oil and petroleum products, a tax on certain feedstock chemicals, a tax on certain imported substances derived from taxable chemicals, an environmental tax imposed on a portion of the modified alternative minimum taxable income of a corporation, cost recoveries from responsible parties, penalties and punitive damages assessed under Superfund, money appropriated from general revenues, and income from investment of the fund balance. The taxing authority expired on December 31, 1995, and has not been reinstated. In fiscal year 2007, for the third consecutive year, all funding for the program will come from general revenues.

Superfund imposes liability on certain persons that generated hazardous substances found at a site, present and certain former owners and operators of a site, and certain transporters who disposed of hazardous substances at a site. As interpreted by the courts, liability under Superfund is strict, joint and several, and retroactive.

Strict liability is liability without fault or negligence. Liability is established simply by showing that a person either owns the site currently or owned it when hazardous substances were disposed there, or sent any type or amount of a hazardous substance there, and that costs have been incurred to respond to a release or threatened release of a hazardous substance.

Joint and several liability means that, if liability is established, any liable person can be held responsible individually or together with other liable persons for 100 percent of the cleanup costs, although total recoveries cannot exceed total costs. Retroactive liability means that Superfund's liability regime applies to parties for conduct that took place prior to the law's enactment in 1980.

Response actions under Superfund are divided into two categories – removal and remedial actions. Removal actions are intended to be short-term, emergency responses to an immediate need. Except in certain exigent circumstances, a removal action cannot require the obligation of more than \$2 million or take longer than 12 months from the date of initial response. In addition, a removal action must contribute to the efficient performance of any long-term, remedial action with respect to the release or threatened release concerned.

The more visible aspect of the Superfund program is the long-term, remedial action program, which provides for long-term remedies to the nation's most serious hazardous waste sites. The initial step in having a site considered for a remedial action under Superfund is for EPA's National Response Center to be notified of a release or threatened release of a hazardous substance. This information is usually provided by state and local governments, but may be provided by anyone, including interest groups and individuals. This notification results in a site being entered into CERCLIS (Comprehensive Environmental Response, Compensation, and Liability Information System), which is EPA's computerized database of potential Superfund sites. EPA will then perform a preliminary assessment, which is the process of collecting and reviewing available information about a known or suspected hazardous waste site or release. EPA uses this information to determine if the site requires further study. If further study is needed, a site inspection is undertaken.

A site inspection is a technical phase that follows the preliminary assessment and is designed to collect more extensive information about the hazardous waste site. A site inspection can include data collection and sampling. The preliminary assessment and site inspection tend to greatly reduce the number of sites considered for inclusion in Superfund. Over one-half of the sites which have received preliminary assessments and site inspections have been determined to be sites where no further Federal action is necessary. Sites remaining in the inventory are eligible for ranking under the Hazard Ranking System.

The Hazard Ranking System is a scoring system EPA uses to evaluate the relative risk to human health and the environment posed by uncontrolled hazardous waste sites. It is a numerically-based scoring system that uses information obtained from the preliminary assessment and site inspection. The Hazard Ranking System assigns each site a score ranging from 0 to 100 based on the likelihood that a site has released or has the potential to release contaminants into the environment; the characteristics of the waste (toxicity and waste quantity); and the people or

sensitive environments affected by the release or threatened release. If a site receives a hazard ranking system score of 28.5 or more, the site is eligible for listing on the National Priorities List.

The National Priorities List is a listing of sites that are eligible for Superfund financed cleanup activities. The fact that a site has been placed on the National Priorities List does not affect the obligation of responsible parties to pay for or conduct the cleanup.

After a site has been placed on the National Priorities List, it is subjected to a remedial investigation in order to select the cleanup strategy best suited for the traits of that site. A remedial investigation entails extensive sampling and laboratory analyses to generate more precise data on the types and quantities of waste at the site, the soil type and water drainage patterns, and the resulting environmental or health threats. At the same time as the remedial investigation is occurring, a feasibility study is conducted. The feasibility study analyzes the specific needs of the individual site, and evaluates alternative cleanup approaches on the basis of their relative effectiveness and cost.

EPA, using the direction given it in the 1986 amendments, issued regulations in 1990 to modify the National Contingency Plan and developed guidance for remedy selection using nine criteria divided into three groups. The first two criteria are referred to as the threshold criteria because they must be satisfied in order for a remedy to be eligible for selection. The threshold criteria are overall protection of human health and the environment, and compliance with all legally applicable or relevant and appropriate requirements contained in other environmental laws (the so-called ARARs).

The second set of criteria is the primary balancing criteria. These criteria are: long-term effectiveness and permanence; reduction of toxicity, mobility, or volume through treatment; short-term effectiveness; implementability; and cost. These criteria are used to help select one alternative from the full range of potential remedies that meet the threshold criteria.

The third group of criteria, the modifying criteria, is state acceptance and community acceptance of the proposed remedial action. These criteria are used to evaluate community and state concerns. EPA may change the selected remedy based on expressed concerns of the state and community.

A Record of Decision is prepared to document site conditions and offer an explanation and justification of EPA's remedy selection. EPA or responsible parties will then prepare a remedial design consisting of the preparation of plans and specifications for implementing the chosen remedial alternative. Finally, EPA or responsible parties will embark upon construction or other work necessary to implement the remedial alternative.

EPA has authority to settle Superfund liability claims. In addition, since 1986, EPA has had specific authority to engage in mixed funding that authorizes cleanups using both Superfund and responsible party financing at the same site. EPA also has authority to engage in *de minimis* settlements with parties that contributed very small amounts of waste at a hazardous waste site so that small contributors may be released from further negotiation or litigation.

In 2002, the Small Business Liability Protection Act amended CERCLA to exempt certain persons and small businesses from liability under Superfund for the transportation and disposal of certain household hazardous wastes. It also promotes the redevelopment of brownfields by exempting certain persons from liability for contamination existing at a site that they purchase after

the date of enactment of this legislation, and limits Federal enforcement at sites addressed under State voluntary cleanup programs.

In addition to response costs, natural resource damages are addressed in Superfund. (Natural resource damages are further discussed in section XI(B).) The Department of the Interior has promulgated regulations to implement the natural resource damages provisions of section 107(f) of the Act.

The Emergency Planning and Community Right to Know Act of 1986, although not written as an amendment to the Superfund program, is closely associated with Superfund and was enacted as title III of the Superfund Amendments and Reauthorization Act of 1986. The program establishes extensive reporting requirements under which facilities that handle, store, or generate hazardous chemicals must notify appropriate state and local officials of the identity of chemicals kept at the site (subject to reporting thresholds) and their accompanying health hazards, the volume of such chemicals kept in inventory at the site, and the storage location for such chemicals. Persons who manufacture, process, or otherwise use chemicals that are in excess of reporting thresholds must submit an annual report of chemical emissions to air, water, and soil at the site.

1. Activities in the 109th Congress

The Subcommittee did not consider any legislation related to the Superfund program during the 109th Congress. The Subcommittee conducted oversight over the Superfund budget and priorities of EPA's Office of Solid Waste and Emergency Response.

C. Brownfields Revitalization

Brownfields are properties where the expansion, redevelopment, or reuse of the property may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant. Revitalization and redevelopment of these abandoned sites can promote economic development, revitalize neighborhoods, and enable the creation of public parks and open space, and can preserve existing properties, including undeveloped green spaces.

In 2001, Congress created specific authority for the Environmental Protection Agency to address brownfields with the enactment of the Brownfields Revitalization and Environmental Restoration Act of 2001, as an amendment to CERCLA. This legislation, enacted in 2002, authorizes funding through EPA for brownfields assessment and cleanup grants, provides targeted liability protections for innocent landowners, bona fide prospective purchasers, and contiguous property owners, and increases support for State and tribal voluntary cleanup programs. The authorization of appropriations for brownfields grants expired September 30, 2006.

The Brownfields Revitalization and Environmental Restoration Act provides grant authority totaling \$250 million annually. The Act authorized appropriations of \$200 million annually for assessment, cleanup, revolving loan funds, research, and job training. Of that amount, \$50 million, or 25 percent of appropriated funds if less than the fully authorized level, is set aside for assessment and cleanup of petroleum contaminated sites. Assessment grants are limited to \$200,000 per site except in some cases, where due to size and contamination level, the limit is \$350,000. The cleanup

grants can be used to capitalize a revolving loan fund or used directly to remediate sites. Each cleanup grant is limited to \$1 million.

The Act authorizes appropriations of \$50 million each year for state and tribal response programs. States may use this assistance to establish or enhance their response programs, capitalize existing revolving loan programs, and develop risk-sharing pools, indemnity pools, or insurance mechanisms to provide financing for remediation activities. Only one state, North Dakota, does not have a voluntary state response program.

Since the enactment of the brownfields law, the Executive Branch has consistently requested, and Congress has funded, far less than the fully-authorized levels for assessment and cleanup grants. In fiscal year 2006, Congress appropriated \$162.5 million for the brownfields program, including \$88.7 million for brownfields site assessments, cleanup, job training, and technical assistance, and \$49.3 million for state voluntary cleanup programs. At these funding levels, only about one-third of eligible applicants receive grants.

1. Activities in the 109th Congress

In the 109th Congress, the Subcommittee held several hearings on issues related to the reauthorization of the brownfields program, as well as the budget and priorities of EPA's Office of Solid Waste and Emergency Response.

The Committee also considered H.R. 5810, to reauthorize appropriations for EPA's brownfields program through fiscal year 2012. The legislation also proposed to eliminate the requirement that 25 percent of available funding be devoted solely to petroleum-related cleanups. On June 28, 2006, the Committee ordered H.R. 5810 reported to the House of Representatives by voice vote (House Report 109-608). No further action was taken on this legislation.

D. Drinking Water Infrastructure and Watershed Protection

Over the years, the Committee has exercised jurisdiction over various agency programs and activities (and legislative proposals) regarding the construction, rehabilitation, improvement and financing of drinking water and water supply infrastructure. For example, the Corps of Engineers has limited authority to provide emergency assistance for drinking water supplies and, on a site-specific basis, has authority to conduct various water infrastructure projects. The Corps also currently owns and operates the Washington Aqueduct facilities, which provide drinking water for Washington, D.C., and a small portion of the surrounding region.

The Committee, however, does not have jurisdiction over EPA regulatory requirements in the context of the Safe Drinking Water Act.

1. Activities in the 109th Congress

As passed by the House of Representatives, the Water Resources Development Act of 2005 included various authorities for the Corps to construct drinking water infrastructure and to provide technical assistance for watershed protection. In addition, the Subcommittee conducted oversight regarding the condition of aging water-related infrastructure.

IV. CORPS OF ENGINEERS/EPA - OCEAN DUMPING

Title I of the Marine Protection, Research, and Sanctuaries Act of 1972, often referred to as the "Ocean Dumping Act," provides for the regulation of the dumping of material into the ocean. Except as authorized by a permit, no person may transport any material from the United States for the purpose of dumping it into ocean waters. Without a permit, no material may be transported from any location for the purpose of dumping it into the ocean where a vessel or aircraft registered in the United States, or flying the United States flag, or where a United States department, agency, or instrumentality is involved. Also, except as permitted, no person may dump any material transported from a location outside the United States into the territorial sea, or into the contiguous zone to the extent it will affect the territorial sea or the territory of the United States.

EPA regulates the dumping of material other than dredged material while dredged material is regulated by the Corps of Engineers, in accordance with criteria developed by EPA. No permit may be issued under the Ocean Dumping Act for the dumping of radiological, chemical, and biological warfare agents, high-level radioactive waste, or medical waste.

EPA may issue permits for the transportation of materials outside the United States for the purpose of dumping, or for the dumping of materials into the oceans, where the Administrator determines that the dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological systems, or economic potentialities. EPA is to establish and apply criteria for reviewing and evaluating permit applications. EPA is authorized to designate recommended sites or times for dumping and, where found necessary to protect critical areas, is required to designate sites or times within which dumping is prohibited.

The Corps of Engineers is authorized to issue permits for the transportation of dredged material for the purpose of dumping it into ocean waters where it determines that the dumping will not unreasonably degrade or endanger human health, welfare or amenities, or the marine environment, ecological systems, or ecological health, welfare, or amenities, or economic potentialities. The Corps must apply the criteria established by EPA.

The Corps makes an independent determination as to the need for the dumping, based upon an evaluation of the potential effects of a permit denial on navigation, economic and industrial development, and foreign and domestic commerce. An independent determination is also made as to other possible methods of disposal and appropriate locations for the dumping. In considering appropriate locations, the Corps is directed to utilize, to the maximum extent feasible, recommended sites designated by EPA.

Prior to issuing a permit, the Corps of Engineers must first notify EPA. When EPA disagrees with the Corps' determination with regard to the statutory criteria, or with regard to a site where dumping is prohibited by EPA, the determination of EPA prevails. Provision is made, however, for a waiver. When the Corps finds that no economically feasible method or site is available for the deposition of the dredged material, a waiver may be requested. EPA must grant the waiver within 30 days unless it finds that the dumping will result in an unacceptable adverse effect on municipal water supplies, shellfish beds, wildlife, fisheries, or recreational areas. Finally, in connection with Federal projects involving dredged material, the Corps may, in lieu of the permit

procedure, authorize ocean dumping through regulations that incorporate the same requirements which would apply in the case of permits issued by the agency.

Several amendments to this law were included in the Ocean Dumping Ban Act of 1988 (P.L. 100-688). Under this legislation, ocean disposal of sewage sludge and industrial waste is prohibited after December 31, 1991. All ocean dumping of sewage sludge and industrial waste has now ceased.

The Marine Protection, Research, and Sanctuaries Act was also amended in Title V of the Water Resources Development Act of 1992. The title establishes a national contaminated sediment task force to improve existing programs related to the disposal of contaminated sediments. Additionally, the title enhances the roles of EPA and an affected state in regulating ocean dumping. The ocean dumping program was reauthorized through fiscal year 1997.

1. Activities in the 109th Congress

The Subcommittee did not address this subject during the 109th Congress.

V. EPA/COAST GUARD - OIL POLLUTION

The discharge of oil or hazardous substances into or upon the navigable waters of the United States is prohibited by section 311 of the Clean Water Act. The section also includes contingency planning requirements for spill prevention, control, and countermeasures; penalties for various violations; and other provisions related to oil and hazardous substance spills. The Oil Pollution Act of 1990 (OPA) (P.L. 101-380) included amendments to the Clean Water Act as well as free-standing provisions and other amendments to provide a more comprehensive scheme of spill cleanup, compensation, prevention, and mitigation measures. OPA had been pending for over a decade but was enacted largely in response to the 1989 *Exxon Valdez* oil spill.

Under OPA (as well as under section 311 of the Clean Water Act), owners or operators of vessels and onshore or offshore facilities are strictly, jointly and severally liable for cleanup costs and covered damages resulting from oil spills. Strict liability means there is liability without a showing of fault or negligence. Joint and several liability means that any liable person can be held responsible individually or together with other liable persons for 100 percent of covered damages, although total recoveries cannot exceed total costs. Covered damages include: the costs of cleanup and removal; natural resources damages, including loss of use of natural resources; injury or loss of real or personal property; loss or impairment of income, profits, or earning capacity; loss of subsistence use of natural resources; costs of providing increased or additional public services; and loss of taxes, royalties, rents, fees, or net profit shares.

The statutory limits on OPA liability are: \$3,000 per gross ton or \$22 million, whichever is greater, for larger, single-hull tankers; \$3,000 per gross ton or \$6 million, whichever is greater, for smaller, single-hull tankers; \$1,900 per gross ton or \$16 million, whichever is greater, for larger double-hull tankers; and \$1,900 per gross ton or \$4 million, whichever is greater, for smaller double-hull tankers. Owners or operators of certain-size vessels and "offshore facilities" must demonstrate financial responsibility (through the use of certificates of financial responsibility, or COFRs) sufficient to meet the maximum amount of possible liability. There is no liability limit in the case of

gross negligence, willful misconduct, failure to report a spill, or violation of certain Federal regulations. There is no Federal preemption of state laws related to the liability for oil spills.

OPA requires the President to ensure effective and immediate removal of a discharge. This requirement may be satisfied by the President removing or arranging for the removal of the discharge; directing or monitoring all Federal, state, and private actions to remove a discharge; or removing or destroying a discharging vessel by whatever means are available. The President also must establish a Coast Guard District Response Group in each Coast Guard District to assist in cleanup, maintain equipment, and assist in developing Area Contingency Plans. The Area Contingency Plans are to be developed by Federal, state, and local interests to provide a joint response effort for the removal of a worst-case discharge. The Plan will describe the responsibilities of all parties, list all available equipment, describe expedited procedures for the use of dispersants, and include integration with other contingency plans.

The Act also included many provisions to help prevent oil spills. For example, the law requires the phase-out of existing single-hull oil carrying vessels of more than 5,000 gross tons starting in 1995. The phase-out is accomplished by a schedule that requires that the oldest and largest vessels be retrofitted or retired first. (As a practical matter, older vessels will not be retrofitted; they will be retired.) Double hulls will be required for all oil-carrying vessels by 2015. Smaller vessels, such as inland barges, must have double hulls or an equally effective double containment system by 2015.

There is established a \$2.7 billion cleanup and compensation fund, the Oil Spill Liability Trust Fund, financed by a five cents per barrel petroleum fee. Taxing authority for the Fund was reauthorized in the 109th Congress, and taxes were reinstated on April 1, 2006. The Fund has borrowing authority of up to \$1 billion if the balance in the Fund is insufficient to fully respond to a spill. The Fund will pay for cleanup costs and damages of up to \$1 billion per incident, but natural resources damages are limited to \$500 million. The Fund will be used for immediate response costs and for costs beyond those paid by the spiller if liability limits are reached.

OPA also increased penalties to \$250,000 and up to three years in prison for an individual or \$500,000 for an organization for failure to report a spill. Civil penalties for a spill were increased to \$32,500 per day of violation or \$1,100 per barrel of oil discharged, and new administrative penalties were established. A minimum penalty of \$130,000, but no more than \$4,300 per barrel, is set for penalties involving gross negligence or willful misconduct. Pursuant to other legislation, penalties are increased on a periodic basis to account for inflation.

To minimize the effects and frequency of spills and to minimize cleanup time and damages, the Act established a \$25 million dollar oil pollution research and development program.

1. Activities in the 109th Congress

The Subcommittee shares jurisdiction over OPA with the Subcommittee on Coast Guard and Maritime Transportation.

In the 109th Congress, the Committee approved legislation to increase the limits on liability for tank vessels under OPA. Section 603 of H.R. 889, the Coast Guard and Maritime Transportation Act of 2006, increased the statutory limits on liability for oil tank vessels and other vessels where there is a release or threatened release of oil into U.S. waters, as well as provided for

future adjustments to the statutory limits, every three years, based on increases in the consumer price index (CPI). H.R. 889 became Public Law 109-241.

The House also approved legislation to raise the statutory limit of, and to reinstate the taxes funding the Oil Spill Liability Trust Fund. Section 1361 of H.R. 6, the Energy Policy Act of 2005, raised the statutory limit of the Fund from \$1 million to \$2.7 million. H.R. 6 became Public Law 109-58.

VI. TENNESSEE VALLEY AUTHORITY

The Tennessee Valley Authority (TVA) was established in 1933 to aid in the development of the Tennessee River Valley region through the proper use, conservation, and development of the region's natural resources. The region includes parts of seven states--Virginia, Kentucky, Tennessee, North Carolina, Mississippi, Alabama, and Georgia. TVA is an independent government corporation, with headquarters in Knoxville, Tennessee. Since its inception, in order to carry out its assigned tasks, it has:

- 1) Constructed a system of reservoirs for navigation, hydroelectric power, flood control and recreation;
- 2) Established an Environmental Research Center to develop new and more effective environmentally benign fertilizers and address other environmental issues in the Tennessee Valley region and throughout the nation;
- 3) Established a tributary area development program to help area organizations take advantage of opportunities offered by the resources of each area--new farm products, manpower training, tourist services, and the like;
- 4) Instituted a program to provide technical assistance to communities in preventing flood damages;
- 5) Established a forestry organization to work with the states, landowners and industries to improve the regions' timber stands;
- 6) Established the Land Between the Lakes National Recreation Area, comprising 170,000 acres in a 40-mile long strip of land between Kentucky Lake and Lake Barkley in Kentucky and Tennessee; and
- 7) Established various watershed management and water quality monitoring and protection programs.

One of the most significant programs of the TVA has been the furnishing of plentiful, low cost electricity to the region. During TVA's first 20 years, most of the power generated was hydroelectric. By 1950, with increased power needs, TVA began building coal-fired steam electric plants, and those now account for about 75 percent of TVA's power generation. Also, TVA constructed nuclear plants to supply additional power needs, although the nuclear program has encountered various setbacks over time, including construction and safety problems and excess power capacity in the region. TVA currently has three nuclear power plants in operation.

Prior to 1959, construction of the power projects was financed mainly by Congressional appropriations. The power program is now completely self-financed through power revenues. In 1959, Congress provided TVA with borrowing authority to finance power system construction through the sale of bonds or notes. By statute, bonding authority is limited to \$30 billion. Revenues from power users are used to repay borrowed funds and to repay funds previously appropriated by the Congress for the TVA power program.

The non-power programs, such as navigation, flood control and environmental management, and management of the Land Between the Lakes were originally funded through appropriations. In fiscal year 2000, Congress transferred the Land Between the Lakes to the U.S. Forest Service, as well as zeroed out all of TVA's appropriations. TVA's non-power programs are also now completely self-financed through power revenues.

1. Activities in the 109th Congress

During the 109th Congress, the Committee participated in the conference committee on H.R. 6, the Energy Policy Act, as conferees over provisions within the Committee's jurisdiction, including matters relating to electricity generation and distribution affecting TVA. This legislation became Public Law 109-58.

The Subcommittee conducted oversight over the Tennessee Valley Authority's budgets and priorities.

VII. SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION

The Saint Lawrence Seaway Development Corporation (SLSDC) is a wholly-owned government enterprise created in 1954 to construct, operate, and develop jointly with Canada a seaway between Montreal and Lake Erie. The Corporation is operated under the Secretary of Transportation's general direction and supervision.

Specifically, the Corporation (1) constructs, maintains, and operates the United States' Seaway facilities, (2) finances the United States' share of Seaway costs on a self-liquidating basis by issuing revenue bonds to the U.S. Treasury, and (3) establishes with Canada's Saint Lawrence Seaway Authority mutually satisfactory arrangements for controlling and operating the Seaway. The Seaway allows for a 2,400-mile system of waterways extending from the Atlantic Ocean to the St. Lawrence River to the headwaters of the Great Lakes. The Seaway has two sections--the Saint Lawrence River section, which extends from Montreal to Lake Ontario, and the Welland Canal section, which connects Lake Ontario and Lake Erie.

During the 97th Congress, legislation was enacted which relieved the Seaway Corporation of the obligation to repay its outstanding debt. During the 99th Congress, P.L. 99-662 provided that tolls paid to the United States along the Seaway would be paid to the Harbor Maintenance Trust Fund and then rebated to those who paid the tolls. The Harbor Maintenance Trust Fund, which was established by the Water Resources Development Act of 1986 primarily to pay for Corps' harbor operation and maintenance costs, is authorized to pay for operation and maintenance of Seaway facilities. During the 103rd Congress, P.L. 103-331 abolished the U.S. tolls along the Seaway.

1. Activities in the 109th Congress

In the 109th Congress, the Subcommittee conducted oversight over the Saint Lawrence Seaway Development Corporation's budgets and priorities.

VIII. NATURAL RESOURCES CONSERVATION SERVICE

The Natural Resources Conservation Service of the Department of Agriculture is authorized to give technical and financial help to local organizations in planning and carrying out watershed projects for flood protection, agricultural water management, recreation, municipal and industrial water supply, and wildlife enhancement.

The watershed work plan for a project, which is the basis for authorization of the project, is prepared by a suitable local organization with assistance from the Natural Resources Conservation Service and in coordination with other Federal agencies. If the estimated Federal cost of a project does not exceed \$5,000,000 and the project does not contain any single structure having a total capacity of more than 2,500 acre-feet, it can be undertaken without congressional authorization.

If the estimated Federal cost exceeds \$5,000,000 or if the work plan contains a single structure having a total capacity of more than 2,500 acre-feet, it must be submitted to Congress for authorization, after being cleared by the Office of Management and Budget. If none of the structures in the plan will have a total capacity of more than 4,000 acre-feet, then the project is authorized by resolutions of the House and Senate Committees on Agriculture.

If any structure in the plan will have a total capacity of more than 4,000 acre-feet, it is referred to the Committee on Transportation and Infrastructure of the House and the Committee on Environment and Public Works of the Senate. Authorization is accomplished by resolutions of these two committees.

Specific appropriations are not made for studies or construction of individual watershed projects. Rather, a lump sum is appropriated to the Natural Resources Conservation Service and initiation of the planning or construction of the projects is approved by the Chief of the Service.

1. Activities in the 109th Congress

On October 25, 2005, the Committee approved a resolution authorizing the Natural Resources Conservation Service to undertake a watershed project in the vicinity of Little Otter Creek, Caldwell County, Missouri.

In addition, the Subcommittee conducted oversight hearings on the Natural Resources Conservation Service's budgets and priorities.

IX. DEEPWATER PORTS

The Deepwater Port Act of 1974 provides for Federal licensing and regulation of offshore ports designed to receive oil from vessels too large to enter conventional ports. Deepwater ports consist of pumping and pipeline facilities in open, deep water (beyond the territorial sea). The Act authorizes the Secretary of Transportation to license owners and operators and to issue regulations to control the location, construction and operation of deepwater ports. The purpose of the Act is to provide a mechanism for permitting the construction and operation of deepwater port facilities while ensuring the protection of the marine and coastal environment and recognizing and protecting the interests of affected states.

One deepwater port facility, the Louisiana Offshore Oil Port (LOOP), in the Gulf of Mexico is presently operating. Various sponsors have proposed additional deepwater ports.

The Subcommittee shares jurisdiction over the Deepwater Port Act with the Subcommittee on Coast Guard and Maritime Transportation.

1. Activities in the 109th Congress

No formal action was taken on this issue during the 109th Congress.

X. INVASIVE/AQUATIC NUISANCE SPECIES

Congress enacted the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Title I of P.L. 101-646) to help reduce the introduction and spread of nonindigenous, invasive aquatic species (zebra mussels, sea lamprey, round goby, and other animals, plants and organisms). This statute, which is implemented by numerous agencies, calls for a ballast water exchange program in the Great Lakes and various research and information exchange programs. The statute was reauthorized and amended by the National Invasive Species Act of 1996 (P.L. 104-332), which expanded the program to include nationwide measures to reduce the spread of invasive aquatic species.

The Subcommittee shares jurisdiction over the Nonindigenous Aquatic Nuisance Prevention and Control Act and the National Invasive Species Act of 1996 with the Subcommittee on Coast Guard and Maritime Transportation.

1. Activities in the 109th Congress

The Subcommittee, with the Subcommittee on Coast Guard and Maritime Transportation, conducted oversight on ballast water management and proposed new international standards for ballast water. The Subcommittees also worked on the development of legislative proposals for National Invasive Species Act reauthorization.

XI. ADDITIONAL AREAS

A. Coastal Pollution and Coastal Zone Management

Protection of the ocean and coastal environment has been an issue of increasing concern to the Committee. Several laws under the Committee's jurisdiction address ocean and coastal pollution. For example, the Clean Water Act contains provisions, including ocean discharge criteria and the national estuary program, targeted exclusively at coastal waters. In addition, because the definition of navigable waters of the United States includes coastal waters, the entire Clean Water Act generally applies to these waters. The Marine Protection, Research, and Sanctuaries Act and the Coastal Zone Management Act also are devoted to protecting coastal resources.

The 101st Congress, as part of the Coastal Zone Act Reauthorization Amendments of 1990 (P.L. 101-508), amended the Coastal Zone Management Act to increase the protection of water quality in and around coastal areas. The 1990 Act also included free-standing provisions (section 6217, Protecting Coastal Waters) to establish a program jointly administered by EPA and NOAA to address coastal nonpoint source pollution.

The 102nd Congress, as part of the NOAA Authorization Act of 1992 (P.L. 102-567), added a new Title V, the National Coastal Monitoring Act, to the existing Marine Protection, Research, and Sanctuaries Act. The new title establishes a coastal monitoring program implemented jointly by EPA and NOAA.

In the 104th Congress, the Committee's jurisdiction was broadened and clarified to include marine affairs, including coastal zone management as it relates to pollution of navigable waters. The Resources Committee has primary jurisdiction over other aspects of marine affairs, including coastal zone management.

In the 106th Congress, legislation to establish a Commission on Ocean Policy was enacted into law (P.L. 106-296). The U.S. Commission on Ocean Policy submitted its report to Congress and to the President on September 20, 2004. The Commission's report included numerous recommendations for addressing all aspects of ocean and coastal policy.

1. Activities in the 109th Congress

No formal action was taken in the 109th Congress with respect to the Coastal Pollution and Coastal Zone Management jurisdiction of the Committee.

B. Natural Resource Damages

The Subcommittee has jurisdiction over natural resource damage provisions in CERCLA (Superfund) and the Oil Pollution Act. The Subcommittee shares jurisdiction over the Oil Pollution Act with the Subcommittee on Coast Guard and Maritime Transportation.

Section 107(f) of CERCLA and Section 1006(e) of the Oil Pollution Act authorize Federal, State, and Tribal governments to act as trustees for natural resources (such as birds, animals, trees, fish, groundwater, etc.) injured, lost, or destroyed by the discharge of oil or hazardous substances. Federal trustees include the Secretaries of the Interior, Commerce, Agriculture and Defense. Under these provisions, trustees may seek damages for injuries to natural resources, including: (1) assessment costs, (2) the cost of restoring and rehabilitating the damaged resources, (3) the cost of replacing or acquiring the equivalent of unrestored or unrehabilitated damaged resources, (4) compensation for lost use of the resources, and (5) compensation for non-use (or passive use) values

of the damaged resources. Both the Department of the Interior (DOI), under Superfund, and the National Oceanographic and Atmospheric Administration (NOAA), under the Oil Pollution Act, have promulgated regulations governing the administration of natural resource damage claims.

1. Activities in the 109th Congress

No formal action was taken in the 109th Congress with respect to the natural resource damages jurisdiction of the Committee.

C. Groundwater Protection

Groundwater is one of our largest natural resources. Located underground and usually within 2,500 feet of the surface, groundwater reservoirs, or aquifers, contain nearly 50 times the volume of the Nation's surface waters, constitute 96 percent of all the fresh water in the United States, and are the primary drinking water source for half of our nation's population.

In particular locations, this resource may be threatened by various sources, including municipal, residential, agricultural and industrial activities. EPA reports that over 80 percent of Superfund sites that have been investigated involve groundwater contamination.

In recent years, EPA has developed a Comprehensive State Groundwater Management Protection Program to help States strengthen their groundwater programs. The voluntary guidance recognizes that states, rather than the Federal government, have the primary role in managing and protecting groundwater resources within their jurisdiction.

Groundwater protection is also addressed in a wide array of Federal statutes. Some of these, such as Superfund and the Clean Water Act, are within the Committee's jurisdiction. Others, such as the Solid Waste Disposal Act -- also referred to as the Resources Conservation and Recovery Act -- and the Federal Insecticide, Fungicide, and Rodenticide Act, are not.

In the past decade, Congress has made various efforts to strengthen groundwater protection, assessment, and research programs. Two major environmental laws--the Safe Drinking Water Act and the Superfund law--were amended during the 99th Congress, establishing important groundwater protection measures. The Water Quality Act of 1987 (P.L. 100-4), which amended the Clean Water Act, provided grants to states for groundwater protection activities. Congress included several provisions in the Safe Drinking Water Act Amendments of 1996 (P.L. 104-182) to increase financial and technical assistance for State and local efforts to protect groundwater (*e.g.*, grants for State groundwater protection strategies, source water protection, and watershed management).

1. Activities in the 109th Congress

No formal action was taken in the 109th Congress with respect to the groundwater protection jurisdiction of the Committee.

D. Water Resources Policy

The Subcommittee exercises jurisdiction over matters generally relating to the appropriate Federal role in water resources conservation, development, and management. Specific areas include drought management, water reclamation and reuse, desalination, and comprehensive watershed protection. The Subcommittee also reviews matters related to Federal interagency coordination in water resources programs and assistance to states in water resources planning, conservation, development, and management. These issues are generally addressed in the biennial water resources development acts.

1. Activities in the 109th Congress

In the 109th Congress, the Committee approved H.R. 135, the Twenty-First Century Water Commission Act of 2005. This legislation would have established a nine-member commission to provide for water assessments to project future water supply and demand, review current water management programs at each level of government, and develop recommendations for a comprehensive water strategy to ensure an adequate and dependable water supply to meet America's needs for the next 50 years. The House passed H.R. 135 by a vote of 402-22 on April 12, 2005. No further action was taken on this bill.