

APWA *Washington* REPORT

March 2006

INTERGOVERNMENTAL

Infrastructure Report Card

TOWN HALL MEETINGS HIGHLIGHT LOCAL INFRASTRUCTURE CONCERNS

In March 2005 the American Society of Civil Engineers (ASCE) and APWA released the latest version of the Report Card for America's Infrastructure. With an overall grade of D and an estimated \$1.6 trillion in investment requirements over the next five years, the findings highlighted a need for greater attention to national infrastructure conditions.

APWA joined ASCE for a series of Infrastructure Town Hall meetings to discuss the Report Card in Salt Lake City, Tampa, Fla., Boston and Houston. Held throughout January and February, the meetings were designed to engage engineering and public works leaders in discussions about local infrastructure concerns.

Utah Chapter Past President G. Trace Robinson, city engineer for West Valley City, Utah, represented APWA members on a panel including local transportation officials during the Salt Lake City meeting. In Boston, Charles Button, New England Chapter officer and deputy COO of the Massachusetts Water Resources Authority, spoke alongside local public works and engineering professionals. The Houston meeting featured APWA member Michael Marcotte, City of Houston public works director, in addition to other local officials.

Traffic congestion, drinking water and overburdened infrastructure were among the issues discussed at each meeting. For more information about the Report Card findings, visit www.asce.org/reportcard/2005/index.cfm.



Utah Chapter Past President G. Trace Robinson discussed local infrastructure observations and needs during a Salt Lake City Town Hall meeting in January.

EMERGENCY MANAGEMENT/DISASTER MITIGATION

First Responders

APWA PARTICIPATES IN KATRINA REVIEW WITH SECRETARY CHERTOFF AND WHITE HOUSE DECISION-MAKERS

On March 10, the Department of Homeland Security (DHS) invited APWA to participate in a "Public Stakeholders Summit" with other first responder associations, state and local homeland security authorities and other high-level government personnel to discuss the recently released White House report detailing the federal response to Hurricane Katrina.

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American Public Works Association • Washington Office

Peter B. King, Executive Director • 1401 K Street, NW, 11th Floor, Washington DC 20005
(202) 408-9541 • (202) 408-9542 fax • apwa.dc@apwa.net • www.apwa.net/advocacy

During the eight-hour meeting, DHS officials provided an overview of the 228-page document which highlights specific problems with the federal response to Katrina. Then, the invited group of about 45 participants was broken down into three smaller groups and tasked with providing a critical review of the report based on the each stakeholder's priorities and experiences.

During the "breakout" sessions, APWA had a unique opportunity to highlight post-hurricane challenges faced by members in the Gulf States with DHS decision makers. Participating in the individual meetings were David Paulison, Acting Director for the Federal Emergency Management Agency (FEMA), and the White House Homeland Security Council responsible for compiling the report. Following the sessions, each group reported their findings to DHS Secretary Michael Chertoff. APWA Government Affairs Manager Dan Jensen represented the Association at the Summit and was able to directly question Secretary Chertoff about two of the biggest problems faced by our members in the Gulf: inconsistencies in response and the reimbursement process as well as the need for FEMA to provide better resources to public works during future catastrophes.

Mr. Chertoff assured APWA the National Response Plan NRP will be simplified to enhance consistency throughout the document for more effective implementation at all levels of response. He also assured our members that the forms, reimbursement process and access to FEMA decision makes will be given the highest priority as the government restyles its response procedures before the new hurricane season starts on June 1.

"We don't want to federalize the [response] process," Mr. Chertoff said. "We have to make it work together."

Disaster Response

WHITE HOUSE REPORT: *HURRICANE KATRINA LESSONS LEARNED*

The White House released a report chronicling what went wrong during the federal response to Hurricane Katrina, the costliest disaster in U.S. history. With more than 200 pages, the report includes 125 recommendations aimed at improving how the federal government responds to catastrophic events. Recommendations that could impact public works include:

National Response Plan

- A comprehensive review of the National Response Plan (NRP), including a 90-day review by an inter-agency team of senior planners with subject matter expertise.
- Establishment of a National Operations Center (NOC) to coordinate response.
- Increased military (Department of Defense) role in future catastrophic events.
- Set standards for "pushing" the pre-positioning of federal assets to the states and locals in case of an imminent catastrophe.
- Revision of the NRP to conform to the new National Emergency Communications Strategy.
- DHS to partner with state and local governments to develop an efficient and transparent logistics system for the procurement and delivery of goods and services during an emergency.

Evacuations

- DHS should transfer planning authority for evacuations to the Department of Transportation (DOT).

Search and Rescue

- Creation of a national search and rescue volunteer certification plan.

Public Communications

- Establish an integrated public alert and warning system.



APWA Board members surveyed storm damage in Pascagoula, Miss., during their January visit to the Gulf Coast. Months after Hurricane Katrina struck, much of the storm debris had yet to be cleared.

Critical Infrastructure

- DHS should review, revise and finalize the National Infrastructure Protection Plan (NIPP) within 90 days to standardize federal policy.
- DHS should share all information and delineate roles and responsibilities with the private sector.

Non-Governmental Aid

- Condition state and local grants under the Homeland Security Grant Program on incorporating NGOs and the private sector into their emergency planning, training, exercises and disaster relief efforts.
- Establishment of an office responsible for integrating non-governmental and other resources into federal, state and local response plans and mutual-aid agreements.
- Remove legal and liability impediments to the use and coordination of non-governmental and private sector resources during a catastrophic event.
- Encourage NGOs to plan their giving streams at the local level in order to provide comprehensive support to affected areas during an emergency and prevent duplication of relief efforts.

Education and Training

- Finalize the Target Capabilities List (TCL).
- DHS should conduct state and local officials training and exercises.
- Establish a National Homeland Security University (NHSU) for senior officials to serve as a capstone to other educational and training opportunities.

These recommendations will be subject to inter-agency and stakeholder review (in which APWA will be taking part) and will culminate with basic changes to federal response procedures taking place before June 1, 2006 – the start of hurricane season. The full report can be obtained at www.whitehouse.gov/reports/katrina-lessons-learned/.

TRANSPORTATION

Americans with Disabilities Act

U.S. DOT PROPOSES AMENDMENTS TO ADA REGULATIONS

The U.S. Department of Transportation (DOT) issued a notice on Feb. 27 to amend its Americans with Disabilities Act (ADA) regulations. The regulations cover policies and practices by transit operators as well as detailed criteria for transportation facilities and vehicles.

The recent notice seeks to clarify responsibility of transportation providers to make reasonable modifications to their policies and practices to ensure program access. In addition, the notice addresses boarding platform access at commuter and intercity rail stations that would preserve requirements in the current standards for transportation facilities in light of DOT's plan to update its standards based on the new guidelines the Board has issued under the ADA.

The notice is available for comment until April 28, 2006. DOT is also seeking public feedback on other issues including bus rapid transit, classification of key stations, vintage streetcars, coverage of intercity rail, and other issues where clarification in the regulations is needed. Comments on this part of the notice are due by May 30, 2006. The notice and related docket information is available on DOT's Web site at <http://dms.dot.gov>.

Federal Highway Administration

CAPKA NOMINATED AS FHWA ADMINISTRATOR

On March 7 President Bush announced his nomination of J. Richard Capka to be Administrator of the Federal Highway Administration (FHWA). Capka has served as Acting Administrator since August 1, 2005, when Mary Peters resigned her post. Prior to assuming the position of Acting Administrator, Capka served as FHWA's Deputy Administrator since August 2002. The nomination will need to be confirmed by the Senate.

Highway Incident Command

NEW HIGHWAY INCIDENT COMMAND RESOURCE AVAILABLE

The Federal Highway Administration's (FHWA) Office of Operations has published a new, user-friendly resource guide on managing highway incidents. The guide is of particular interest as traffic incident management in work zones comes into greater use as a work zone management strategy.

The purpose of the guide, *Simplified Guide to the Incident Command System for Transportation Professionals*, is to introduce Incident Command System (ICS) to stakeholders who may be called upon to provide specific expertise, assistance or material during highway incidents but who may be largely unfamiliar with ICS organization and operations. These stakeholders include professionals at transportation agencies, companies involved in towing and recovery, as well as elected officials and government agency managers at all levels.

The electronic version of the new guide is available in pdf and html formats at the FHWA Traffic Incident Management Web site: www.ops.fhwa.dot.gov/incidentmgmt/publications.htm. Printed versions of the document will be available shortly. For more information or for copies of the ICS guide, please contact Laurie Radow at Laurel.Radow@fhwa.dot.gov.

Transportation Conformity

SAFETEA-LU CONFORMITY PROVISIONS GUIDANCE ISSUED

The U.S. Department of Transportation (DOT) and the Environmental Protection Agency (EPA) have issued interim guidance on implementing the transportation conformity-related provisions contained in SAFETEA-LU. The agencies jointly issued the guidance to provide a single source of information to those responsible for implementing transportation conformity.

SAFETEA-LU made a number of revisions to the Clean Air Act's transportation conformity provisions. The guidance addresses each of these revisions and explains how to implement the changes during the period before the federal transportation conformity rule is revised.

For specific questions about implementation contact the Regional and Division DOT and EPA Offices. General questions about the guidance may be directed to Rudy Kapichak of EPA at (734) 214-4574; Cecilia Ho of FHWA at (202) 366-9862; or Abbe Marner of FTA at (202) 366-4317. The interim guidance is posted at www.fhwa.dot.gov/environment/conformity/sec6011guid.htm.

Obligated Projects

PRELIMINARY GUIDANCE AVAILABLE ON ANNUAL PROJECT LISTING

The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) have issued preliminary guidance on the annual listing of obligated projects. SAFETEA-LU required rulemaking on this requirement within 180 days of the August 10, 2005, enactment date, specifying the types of data to be included in the list. Rather than issuing a separate regulation on the topic, the agencies intend to include it in draft notice of proposed rulemaking prepared for publication at a later date in the *Federal Register*.

To facilitate early transition to SAFETEA-LU before the rulemaking, FHWA and FTA have prepared guidance, which is based exclusively upon the planning provisions set forth in statute and includes illustrative examples drawn from current practice. The guidance is labeled preliminary because an update is envisioned when more descriptively detailed planning regulations are finalized. More information is available by visiting FHWA's Web site at www.fhwa.dot.gov/hep/annuallistatt.htm.

Transportation Research

FHWA LAUNCHES WEB SITE ON COOPERATIVE RESEARCH PROGRAM

The Federal Highway Administration (FHWA) has created a new Web site to provide information regarding the Surface Transportation Environment and Planning Cooperative Research Program (STEP) and is soliciting public input on the program's implementation strategy.

STEP was established by section 5207 of SAFETEA-LU to improve understanding of the complex relationship between surface transportation, planning and the environment. SAFETEA-LU provides \$16.875 million per year for fiscal years 2006-2009 to implement this new cooperative research program. Due to obligation limitations, rescissions and congressional designation of Title V Research in SAFETEA-LU, it is anticipated that approximately \$11.9 million of the \$16.875 million authorized will be available each fiscal year.

FHWA will use the Web site, www.fhwa.dot.gov/hep/step/index.htm, as a major mechanism for informing the public regarding the status of STEP and the process for forwarding comments to FHWA. Comments must be received on or before April 17, 2006. For more information contact Felicia Young at (202) 366-1263, Felicia.young@fhwa.dot.gov.

ENVIRONMENT

E-waste

PUBLIC WORKS DIRECTOR TALKS E-WASTE WITH CONGRESSIONAL STAFF

As technology continues to evolve and improve, Americans are discarding approximately 2 million tons of used electronics each year, including computers and televisions, and nearly 128 million cell phones. With toxic chemicals such as lead and mercury in the devices, discarded electronics pose a threat to human health and the environment. Roger Flint, chair of APWA's Solid Waste Management Committee and director of public works and utilities for the City of Spokane, Wash., briefed House and Senate staff members about implications and cost of e-waste and electronic recycling on March 7.



APWA Solid Waste Management Committee Chair Roger Flint discussed e-waste with Congressional staff members during a recent briefing.

Washington has pending legislation for a shared-responsibility model of electronic recycling between manufacturers, retailers, consumers and local jurisdictions which would ease the burden from disposal facilities. The state is also developing a manufacturer-implemented and financed state-wide system for recycling computers, monitors and televisions. The program would be cost-free to households, small businesses and government, school districts and non-profit organizations.

The briefing was one in a series of Congressional briefings sponsored by APWA to provide information about the role and needs of public works and infrastructure in local communities.

Gulf Coast Environmental Aftermath

RED TAPE & LACK OF COORDINATION HAMPER ASSESSMENT OF POLLUTANTS

The White House released a report criticizing the federal response and unnecessary debris removal delays following Hurricane Katrina. The report also criticizes the government's ability to warn the public about lingering environmental hazards along the Gulf Coast. The assessment, *Federal Response to Hurricane Katrina: Lessons Learned*, emphasizes the need for better communication planning so first responders and area residents have prompt, accurate information about environmental hazards. The small number of personnel in the region during the critical weeks after the hurricane significantly hampered efforts to conduct rapid and comprehensive environmental assessments.

According to the report, 118 million cubic yards of debris, more than 7 million gallons of spilled oil into Gulf Coast waters, three flooded Superfund sites in New Orleans, and the destruction and weakening of numerous drinking water and wastewater facilities along the coast required a massive and coordinated response. While fears of a “toxic soup” contaminating the region in the aftermath of the hurricane never materialized, the report did indicate collective environmental damage created a “potentially hazardous environment for first responders and the public.” The review also noted unnecessary and complicated rules for debris removal and mixed messages at all levels of government impeded an efficient response and recovery.

The report recommends that the Department of Homeland Security (DHS), in partnership with the Environmental Protection Agency (EPA), oversee federal planning efforts to expedite the gathering of environmental data and communicate the most accurate and timely data about environmental hazards to the public. Among the remaining recommendations, DHS was directed to improve the institutional capacity of its emergency response teams, which are charged with assessing environmental hazards and notifying the public, by adding personnel from the Department of Health and Human Services and the Occupational Health and Safety Administration (OSHA). The review also recommended that OSHA develop operational procedures for worker health and safety, including identification of potential hazards for out-of-area responders.

The full report is available at www.whitehouse.gov/reports/Katrina_lessons_learned/index.html.

Water Security

EPA RELEASES TOOLS TO AID UTILITIES WITH SECURITY NEEDS

In an ongoing effort to improve the security of our nation’s drinking water and wastewater infrastructure, the Environmental Protection Agency (EPA) released several tools for utilities.

10 Steps to Maintain Critical Wastewater Services & Protect Public Health in an Emergency, outlines essential steps to help operators maintain critical services in an emergency. EPA encourages all wastewater systems to conduct vulnerability assessments and take the appropriate steps to improve security and emergency preparedness. These 10 Steps are an easy place to start. For more information, visit www.epa.gov/safewater.

In the booklet *Drinking Water Security for Small Systems Serving 2200 or Fewer Persons – one of the SIMPLE Tools for Effective Performance Guide Series*, guidance is provided to very small community drinking water systems on the basics of water system security. The guide emphasizes the importance of conducting vulnerability assessments and creating environmental response plans and offers advice and simple steps to complete these essential projects. The guide also identifies user-friendly tools and templates and suggests practical security improvements. Copies of the booklet are available by calling the Safe Drinking Water hotline at (800) 426-4791.

EPA also announced that version 3.0 of the *Building Decontamination Residue (BDR) Decision Support Tool (DST)* is now available to aid utilities in decontamination activities following a contamination event. Version 3.0 contains all of the functionality previously available in version 2.1 and includes updated information and additional functional enhancements based on stakeholder feedback. Version 3.0 is a working decision support tool that can be used in the event of an incident involving chemical or biological contamination of a building, or as a tool for use in exercises and planning activities.

Another update to the DST will be released in April 2006. This release will include a new module to address the disposal of water systems materials from water treatment/distribution facilities that have gone through decontamination activities following a contamination event with chemical/biological warfare agents or toxic industrial chemicals.

Users with existing userIDs and passwords can log into the tool at the following Web site: www2.ergweb.com/bdrtool/login.asp. To request an account, visit www2.ergweb.com/bdrtool/login.asp.

Finally, EPA released a summary booklet titled *Active and Effective Water Security Programs*. The booklet is available by contacting the Office of Water Resource Center by phone at (202) 566-1729 or by e-mail at center.water-resource@epa.gov. Please ask for document # 817-K-06-001.

Wetlands

SUPREME COURT WADES INTO THE CLEAN WATER ACT

Last month the Supreme Court heard oral arguments into questions over the Army Corps of Engineers' (Corps) authority under the Clean Water Act (CWA). At issue before the Supreme Court are two separate rulings from the U.S. Court of Appeals for the Sixth Circuit (Court of Appeals).

The Court of Appeals upheld the Corps' authority to require permits from those who seek to fill or discharge pollutants into wetlands that are either separated by a man-made barrier from a tributary or located next to similar tributaries (such as drainage ditches) that flow into larger bodies of water used for navigational purposes. In Carabell v. U.S. Army Corps the Court of Appeals held that under the CWA, the Corps could regulate wetlands, even though a man-made barrier cut off the flow of water from the property to a nearby ditch that ultimately emptied into a tributary of the navigable waters (391 F.3d 629 (6th Circuit 2004)).

Similarly, in U.S. v. Rappanos, the Court of Appeals upheld the Corps' jurisdiction over wetlands connected hydrologically to a tributary, such as through a drainage ditch, to the navigable waters of the U.S. The Supreme Court will consider whether CWA jurisdiction extends to wetlands that do not abut navigable-in-fact waters and whether CWA jurisdiction can extend to a wetland separated from a tributary stream of navigable-in-fact waters by a man-made berm when there is no proven hydrologic connection between the two water bodies.

Attorneys representing the developers in both cases argued the Corps' assertion of jurisdiction to regulate the nation's wetlands extending from navigable waters results in a limitless claim subject to no boundaries or reasonable interpretation. They also argued for reigning in the federal government's power and leaving regulation of the nation's inland wetlands to states. The Solicitor General argued the CWA confers jurisdiction over any channelized flow of water that enters into navigable waters of the United States to the Corps. The Solicitor General further argued that section 404(g) of the CWA, with its reference to "other waters," is the clearest indication that Congress intended to regulate beyond traditionally navigable waters and authorize regulation of tributaries. Some CWA specialists worry that a ruling limiting the Corps' authority to regulate the nation's wetlands will gut the original intentions of the Act. A decision by the full court is expected later this year.

Drinking Water

MONITORING GUIDANCE ISSUED FOR FINAL LONG-TERM ENHANCED SURFACE WATER TREATMENT RULE

The Environmental Protection Agency (EPA) issued guidance to drinking water utilities on how, when and where they must monitor incidental pathogens in source water. The guidance, *Source Water Monitoring Guidance Manual for Public Water Systems for the Final Long Term Enhanced Surface Water Treatment Rule (LT2)*, explains how to report data and how the data can be evaluated to determine the extent of treatment needed under the LT2 rule. The manual is intended for utilities using surface water, laboratories, states, tribes and other primacy agencies with regulatory authority.

The LT2 rule requires utilities using surface water to conduct source water monitoring for cryptosporidium, E.Coli and turbidity to assess the relative risk of the water and determine if any additional treatment is necessary.

The monitoring results are used to determine which of four risk-based treatment “bins” the utility is in. The manual also contains information on when utilities can “grandfather” cryptosporidium data, or use data they have already collected to meet the requirements of the LT2 rule. The manual is available at www.epa.gov/OGWDW/disinfection/lt2/pdfs/guide_lt2_swmonitoringguidance.pdf.

Drinking Water Disinfection

GUIDANCE ISSUED ON MONITORING FOR DISINFECTION BYPRODUCTS

The Environmental Protection Agency (EPA) recently issued final guidance to drinking water utilities on the new monitoring plans required under the Stage 2 Disinfection Byproducts Rule. Known as the *Initial Distribution System Evaluation Guidance Plans*, the plans enable utilities to identify where they will monitor drinking water for two classes of disinfection byproducts – total trihalonethanes and haloacetic acids – as required under the new regulations.

Under the rule, utilities are required to evaluate their distribution systems, to identify areas with high concentrations of byproducts, and to take appropriate steps to address areas of concern. The monitoring plans under the Stage 2 Rule apply to water utilities that use a primary or residual disinfectant other than ultraviolet light and that serve more than 10,000 people. The manual contains worksheets for preparing the monitoring report and discusses sampling protocols, consecutive systems, compliance schedules and factors affecting disinfection byproduct formation. The guidance is available at www.epa.gov/OGWDW/disinfection/stage2/compliance.htm#idse.

UTILITIES & PUBLIC RIGHTS-OF-WAY

Communications Act

APWA FILES STATEMENT WITH SENATE COMMITTEE ON ROW MANAGEMENT

In testimony filed with the Senate Commerce Committee, APWA President Bob Freudenthal urged members of the Committee to preserve local authority to manage local rights-of-way in any rewrite of the 1996 Telecommunications Act. The statement was submitted as part of video franchising hearing held by the Committee Feb. 15.

Congress is considering legislation to rewrite the 1996 Act. Since its enactment a decade ago, rapid changes in communications technology and expansion of available services are placing new strains on the regulatory framework governing telecommunications policy.

In his testimony, Freudenthal stated that APWA supports competition and the rapid deployment of communications technologies and services and urges a balanced approach that encourages innovation and preserves local governments’ long-standing authority to manage public rights-of-way and to receive fair and reasonable compensation for their use. The statement also pointed out that franchising authority is a core tool local governments use to manage rights-of-way in the public interest in order to protect public safety and public infrastructure.

The hearing was one in a series the Senate Commerce Committee is holding early this year on the issue of updating the Communications Act. Sen. Ted Stevens (R-AK), Chairman of the Committee, intends to move a single comprehensive telecommunications bill this year sometime after hearings are completed. Rep. Joe Barton (R-TX), Chairman of the House Energy and Commerce, plans to markup a third draft of a bill designed to accelerate the deployment of new Internet services in March. Local governments were concerned the second draft would reduce local control of rights-of-way and not keep local governments whole.

APWA Washington Report contributors include Julia Anastasio, Jim Fahey, Dan Jensen and Emily Lovald. Becky Wickstrom is editor of the Report.