

by Stephen Barlas, Washington Editor

# OSHA Getting Active, Sewer Funding Continues To Decline



2008 will be a big year for the underground construction industry in Washington if for no other reason than OSHA, which has been the Rip Van Winkle of federal regulatory agencies, is about to emerge from its slumber with a rule targeted directly at the underground construction industry. The agency's proposed rule on confined spaces in construction is a direct strike on companies who build sewer systems and pipelines. In announcing the proposed rule, OSHA specifically pointed to companies building sewer systems, saying they are generally unfamiliar with the hazards associated with these work sites.

The agency already has a very limited rule for confined spaces in construction, but it only specifies training requirements. This new proposed rule goes way beyond training. It sets up a much more expansive framework based on four new classifications for confined spaces in construction including one expressly for sewer-type projects, which will be called a Continuous System-Permit-Required Confined Space (CS-PRCS). The other three are: Isolated-Hazard Confined Space, Controlled-Atmosphere Confined Space and Permit-Required Confined Space. Each of the four has its own requirements.

The proposed rule would require an employer to first determine whether a confined space was subject to a "hazard." That includes obvious hazards plus other haz-

ards that have "a reasonable probability" of occurring. If a hazard is present, then the company would have to decide which of four classifications the work space fit into. Based on that category, certain protections would have to be taken.

For companies building sewers, those sites would likely be classified as a CS-PRCS. Here, OSHA wants companies working in CS-PRCSs to install some sort of early-warning system to alert attendants monitoring a CS-PRCS and authorized entrants that an engulfment hazard may be developing. Examples of early-warning systems include, but are not limited to: alarms activated by remote sensors and lookouts with equipment for immediately communicating with the authorized entrants and attendants. There would be requirements which would apply to all four categories. For example, employers would be required to use either barriers or high-visibility physical restrictions, such as warning lines with flags, installed across the entrances to the PRCS.

George Kennedy, vice president of safety for the National Utility Contractors Association (NUCA), wonders why this new confined space standard for construction companies is even needed, since there is far fewer confined space incidents in construction than in general industry. "Presumably, the good thing about having a confined space entry standard for construction is

that contractors will know exactly what is expected of them," Kennedy states. "That said, unless OSHA includes a statement that says the standard will apply to all confined space operations performed by construction employees, there will be situations (e.g., maintenance) where contractors will have to comply with the general industry standard. This will likely cause confusion and increase the cost of compliance."

### State revolving fund

Construction work on collection systems will face additional funding challenges in 2008 as Congress cut the appropriation for the Clean Water State Revolving Fund (CWSRF). That is the fund in each state which uses federal dollars to support low-interest loans to cities and towns for sewer projects. In mid-December when it passed an omnibus spending bill for all government agencies in fiscal 2008 (that is the fiscal year that began Oct. 1), Congress set CWSRF funding at \$689.1 million. That is the lowest it has ever been, according to Adam Krantz, managing director for the National Association of Clean Water Agencies (NACWA). The Drinking Water SRF did better, but only relatively so. Its 2008 appropriation was set at \$829 million, a drop of only \$8 million from 2007. Krantz says both the Clinton and Bush administrations have intended to end congressional appropriations to the CWSRF by 2011, and that

is likely to happen. Krantz hopes that Congress will establish a Trust Fund – like the ones used for highways and airports – for wastewater infrastructure, which he thinks is “ultimately inevitable.”

In the meantime, what makes matters worse is that the Congress shows no signs of granting the Bush administration’s request to give the EPA authority to allow local communities to supplement those CWSRF funds by allowing states to raise money for water projects by issuing Water Enterprise Bonds. Being able to sell these water-specific bonds would allow states to sidestep the current caps they face on use of private activity bonds. Rick Farrell, executive director, Council of Infrastructure Financing Authorities, says, “Some of our states are interested in that, others are not. The primary concern with that proposal is that it not be seen as an alternative to the CWSRF loans.” Farrell says that because SRF loans through a state are available at very low interest rates, they would be a much better deal for a local government than a Water Enterprise Bond.

Water Enterprise Bonds were not included in the CWSRF reauthorization bill (H.R. 720) the House passed in March 2007. That Water Quality Financing Act would re-

authorize the CWSRF, which was first approved by Congress in 1987, but has never been reauthorized. The bill would make some changes, including lifting the annual CWSRF authorization level to \$2 billion in fiscal 2008 and to \$4 billion by 2010. But raising the authorization levels would make little sense since Congress is slowly reducing the appropriations for the CWSRF.

While increasing authorization levels for the CWSRF would mean little, making administrative changes simplifying the program and broadening its appeal would be very helpful to many cities and towns. The House bill does include some of that, which is why it is good news that Senate Democrats will be introducing their own CWSRF reauthorization bill this winter, according to NACWA’s Krantz. That must happen before CWSRF “beautification” efforts can pass Congress.

#### **Plans to expand wetlands definition**

There already are matching Senate and House bills on another water-related issue: permits for construction in wetlands, a requirement which affects companies building pipelines, for example. The Clean Water Restoration Act (S. 1870/H.R. 2421) would expand the wetland construction projects

which would need to get a permit from the Army Corps of Engineers. The bill has strong Democratic support and a rational for moving forward now: the legislation would reverse a Supreme Court decision of last June. In that decision, the Court defined wetlands subject to Clean Water Act permits very narrowly. The court said only “continuously flowing” rivers and streams and, by implication, the wetlands next to them are protected by the Clean Water Act. The Clean Water Restoration Act makes it clear that the Clean Water Act has always covered a myriad of interstate and intrastate waters replacing the term “navigable waters” which is used in the Clean Water Act and replace it with the term “waters of the United States,” defined to mean all waters subject to the ebb and flow of the tide. That language would bring prairie potholes, wet meadows, playa lakes and natural ponds under the Corps’ regulatory aegis. The Senate Environment and Public Works Committee held a hearing on the bill in December, and the House Transportation and Infrastructure Committee was supposed to have done likewise; but that hearing was delayed. In any case, it looks like Democrats will try to move this bill through Congress in 2008. ■