A Summary of the Changes To the House-Passed *Sewage Overflow Community Right-to-Know Act* (H.R. 2452) and Report

The National Office is pleased to provide you with this summary of changes to the *Sewage Overflow Community Right-to-Know Act* (H.R. 2452), which was passed by the U.S. House of Representatives June 23 in a voice vote. NACWA negotiated over several months with American Rivers and key staff from the House Transportation & Infrastructure (T&I) Committee and Rep. Timothy Bishop's (D-N.Y.) office to improve the bill from its introduced version. While the resulting bill and its accompanying report do not address all of the concerns raised by the clean water community, NACWA believes it represents a good-faith effort to set up a workable program that would not impose unnecessary costs and burdens on municipalities.

The House bill is similar to an earlier version, also negotiated by NACWA and which the Association's Board of Directors agreed to support in April. NACWA will now focus on working the Senate as it prepares to consider the bill. Although a similar notification bill (S. 2080) was introduced last year by Sen. Frank Lautenberg (D-N.J.), his staff has said they will most likely use the House-passed version when they begin their deliberations. Among other things, NACWA will urge the Senate to include funding in the notification bill to help municipalities cover the costs of meeting the requirements in the bill, should it be passed into law. Lautenberg has been a key ally on the funding issue, sponsoring another bill (S. 836) that would provide $1.8 billion in grants to address wet weather challenges.

The following are some of the key changes in the legislation and report language that would affect NACWA members:

- In line with NACWA member concerns, the report language clarifies that the legislation "does not require a publicly owned treatment works (POTW) to assume monitoring, notification, and reporting responsibility for satellite collection systems that . . . are not owned or operated by the publicly owned treatment works." (Report, Page 9-10).

- The report's background information also relies primarily on EPA's *2004 Report to Congress* and removes any reference to the misleading reports provided by American Rivers that were in the initial legislation.

- The report language provides guidance on what is meant by a "feasible" monitoring system and clearly states that "the committee does not intend new subsection (r)(1)(A) to require the implementation of a technology-based system at every treatment works to monitor for potential overflows." The report language also requires EPA to consider ten factors in

making a feasibility analysis, and includes cost as a factor (Report, Page 12). These clarifications were requested by NACWA and their inclusion represents a good step forward. (Report, Pages 10, 12)

- The report also further defines the relationship between this bill and the Combined Sewer Overflow Control Policy. The report states that H.R. 2452 "will continue to allow for the utilization of the Combined Sewer Overflow Control Policy . . . to the extent that the monitoring, notification, and reporting requirements contained in the nine minimum controls and long term control plan [LTCP] of an individual publicly owned treatment works ***are not inconsistent*** with the monitoring, notification, and reporting requirements of H.R. 2452." While this language is not perfect, it at least opens the door for a municipality to demonstrate that their LTCPs should be deemed consistent with H.R. 2452; however, it should be noted that where they are not, the requirements of H.R. 2452 would predominate. (Report, Page 13)

- The bill clarifies the timelines for how the monitoring, notification, and reporting guidelines for sanitary and combined sewer overflows would be implemented. EPA must finalize its rulemaking within one year of the bill's passage and the requirements would take effect only once a POTW's permit comes up for renewal. There is only one exception to this general rule, and that is that the public notification requirements (not the monitoring or reporting requirements) become enforceable 30 days after the rule becomes final if a State's program is deemed less stringent or not substantially equivalent to the notification requirements contained in H.R. 2452 (see also next bullet).

- The final House bill also adds an important new section [(r)(5)] that was critical to CASA and NACWA that allows any state to show that its regulatory regime is "substantially equivalent" to H.R. 2452 and, therefore, need not be modified. Several NACWA members raised concerns that they would rather notify public health authorities than directly report to the public. If a state currently has, or before the legislation becomes final puts in place, such rules governing monitoring, notification, and reporting, it would have a solid likelihood of being declared "substantially equivalent" to the federal legislation. This means that POTWs should give some thought to their state regimes and potentially seek some beneficial changes to them if it appears that passage of H.R. 2452 becomes more likely.

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