

**EXECUTIVE COMMITTEE**  
**PRESIDENT**

**Marian A. Orfeo**

*Director of Planning  
& Coordination*

Massachusetts Water  
Resources Authority  
Boston, MA

**VICE PRESIDENT**

**Kevin L. Shafer**

*Executive Director*  
Milwaukee Metropolitan  
Sewerage District  
Milwaukee, WI

**TREASURER**

**Jeff Theerman**

*Executive Director*  
Metropolitan St. Louis  
Sewer District  
St. Louis, MO

**SECRETARY**

**David R. Williams**

*Director of Wastewater*  
East Bay Municipal  
Utility District  
Oakland, CA

**PAST PRESIDENT**

**Christopher M. Westhoff**

*Assistant City Attorney -  
Public Works General Counsel*  
City of Los Angeles  
Los Angeles, CA

**EXECUTIVE DIRECTOR**

**Ken Kirk**

December 19, 2008

**Benjamin Grumbles**

Assistant Administrator, Office of Water

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, NW (MC4101M)

Washington, DC 20460

  
Dear Mr. Grumbles,

As you know, in 2005 NACWA and the Natural Resources Defense Council (NRDC) provided your office with a carefully crafted proposal clarifying the standard wastewater treatment plants need to meet in order to bypass secondary treatment during peak wet weather flows. With your encouragement, NACWA and NRDC worked together on a compromise approach to provide additional clarity on how federal Clean Water Act requirements applied to blending. NACWA appreciates your office's efforts to propose a policy statement based on the NACWA/NRDC agreement.

After seeking comment on the proposed policy and presumably making changes based on those comments, your office forwarded a final draft policy to the White House's Office of Management and Budget (OMB) for review. Though NACWA did not have the benefit of seeing the version of the policy that went to OMB, we applaud EPA's action and understand the Agency has not made significant changes to the policy. NACWA worked tirelessly with OMB and others in the administration to get a final policy, but to date there has been little progress.

NACWA now understands that the EPA Regions have been given direction to implement the proposed policy. We have been contacted by our members in Region 7, where regional staff, with apparent direction from EPA Headquarters, are requiring utilities to develop the 'no feasible alternative' utility analysis contemplated by the proposed peak flows policy. Unfortunately, based on our understanding of the situation in Region 7, the proposed policy is being used in a manner inconsistent with what NACWA believes is the intent of the compromise approach it worked to develop. NACWA and NRDC wrote to you in October 2006, indicating that a final policy would need to be accompanied by additional guidance in the form of fact sheets and a Q&A (questions and answers) document to further clarify the intent and applicability of the policy. The proposed policy is now apparently being implemented without the benefit of this additional guidance.

Letter to Grumbles on Peak Flows Policy

December 19, 2008

Page 2

Of greater concern is the fact that Clean Water Act permitting decisions are now being based on a proposed policy that the current Administration has not approved and finalized. NACWA has serious concerns about implementing a draft policy via permit requirements with potentially massive financial consequences, especially at a time when municipalities are struggling.

We would appreciate clarification as soon as possible regarding your office's position regarding implementation of the proposed policy.

Sincerely,

A handwritten signature in black ink, appearing to be the name 'Ken Kirk'.

Ken Kirk

Executive Director