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Ken Kirk

May 7, 2009

The Honorable Frank Lautenberg

U.S. Senate

324 Hart Senate Office Building

Washington, DC 20510

Dear Senator Lautenberg:

The National Association of Clean Water Agencies (NACWA), representing the nation's publicly owned wastewater treatment works (POTWs) that serve a majority of the sewered population of the United States, would like to express its appreciation for your work on the *Clean Coastal Environmental and Public Health Act of 2009* (S. 878). NACWA strongly supports the overall concepts and framework of the legislation, as well as the important goal of protecting the environmental health of our coastal waters and the health of those who swim and recreate in these waters.

S. 878 updates the *Beaches Environmental Assessment and Coastal Health Act* (BEACH Act) to require EPA to complete an evaluation and validation of a rapid testing method for monitoring coastal recreation waters by October 15, 2012. NACWA recognizes the value of rapid test methods for recreational waters and fully supports their use. NACWA is particularly pleased that the October 2012 deadline established by S. 878 for validation of the rapid testing method is consistent with the terms of the settlement agreement filed August 8, 2008 by NACWA, the U.S. Environmental Protection Agency (EPA), the Natural Resources Defense Council (NRDC), and Los Angeles County in *Natural Resources Defense Council v. U.S. EPA* (Civil Action No. CV-06-4834 PSG) (Settlement Agreement). This settlement and its accompanying Consent Decree establish an October 15, 2012 deadline for EPA to develop new recreational water quality criteria and an associated rapid testing method. NACWA fully supports congressional efforts to establish a complementary deadline in S. 878 that is reflective of the agreement reached by all parties in the litigation.

NACWA does, however, have a significant concern with the definition of "rapid testing method," as outlined in Section 2 of S. 878, which defines a rapid testing method as a method for testing water quality for which results are available "as soon as practicable and not more than 2 hours after the commencement of the rapid testing method." This definition is at odds with the August 2008 Settlement Agreement, which only defines rapid test methods as those which produce results "as soon as practicable" and does not include a specific time limit. While the Settlement Agreement does note that NRDC believes viable results can be obtained within two hours of testing and EPA believes results can be validated within six hours, it is the "as soon as practicable" language that is the consensus approach.

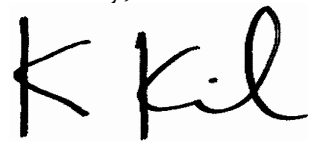
NACWA believes that the current legislation should advance in a manner that is consistent with the Settlement Agreement language, particularly with regard to the definition of a rapid testing method. NACWA's concern over the two hour limit is based in large part on opinions from water quality experts that, based on current science, laboratories cannot reliably perform rapid tests with results available in two hours or less. Additionally, it is unclear whether the science of water quality testing will make sufficient advances by 2012 to meet the two hour rapid test deadline envisioned by S. 878. NACWA believes that the current two hour requirement in the legislation mistakenly presupposes the outcome of EPA's planned scientific research over the next three years on rapid test methods instead of allowing the science to determine the appropriate rapid test method response time.

NACWA further believes this approach is contrary to the spirit and intent of the litigation Settlement Agreement, which is designed to allow robust scientific research with stakeholder input to determine appropriate new recreational water quality criteria and associated rapid testing methods. NACWA continues to believe credible recreational water quality and rapid test methods that are scientifically sound and appropriately protective require reasonable time frames and deadlines. These important considerations were included in the Settlement Agreement language. While NACWA is fully supportive of a two hour rapid test method limit if the science advances to a point where such a test can be validated, we believe the two hour limit outlined in S. 878 is unrealistic and will result in violations of the law if scientific research cannot produce such a test by 2012. Accordingly, NACWA encourages Congress to remove the two hour limit included in the current legislation's definition of rapid test method and instead use only the "as soon as practicable" language, ensuring consistency with the litigation Settlement Agreement and allowing the ongoing scientific research to determine an appropriate outcome.

If the two hour limit is not removed, NACWA believes report language should be included with S. 878 indicating that Congress will revisit the two hour requirement if the science does not progress to a point where a rapid test method with results in two hours or less is available by 2012. Such language should indicate Congress's intent to allow valid science and research to ultimately determine the appropriate response time for any rapid test method, as well as an understanding that the two hour limit may need to be revised based on the outcome of EPA's efforts over the next three years to develop new recreational water quality criteria and associated rapid testing methods. Report language should also clarify that any rapid testing method developed under S. 878 is only to be used for recreational water quality monitoring and is not to be used for monitoring or testing effluent discharges at publicly owned treatment works or for determination of compliance with National Pollution Discharge Elimination System (NPDES) permits.

Again, NACWA is fully supportive of the goals of the *Clean Coastal Environmental and Public Health Act*, which will provide a necessary and effective update to the Clean Water Act to help facilitate improvements to beach water quality and improve public health for those who recreate at our nation's beaches. The Association looks forward to working with you to fully address the concerns of the nation's publicly owned treatment works and appreciates your time and attention to this matter. If you have any questions please do not hesitate to contact Pat Sinicropi on my staff at 202/533-1823 or psinicropi@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is fluid and cursive, with the first letter "K" being large and prominent.

Ken Kirk
Executive Director

Cc: Sen. Barbara Boxer; Sen. James Inhofe; Sen. Benjamin Cardin; Sen. Mike Crapo