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Ken Kirk

September 10, 2009

The Honorable Lisa Jackson
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue NW
MC 1101A
Washington, DC 20460

The Honorable Janet Napolitano
Secretary
Department of Homeland Security
245 Murray Lane
401
Washington, DC 20528

Dear Secretary Napolitano and Administrator Jackson:

As the leading advocacy organization representing the nation's municipal wastewater treatment agencies, the National Association of Clean Water Agencies (NACWA) urges the Department of Homeland Security (DHS) and the Environmental Protection Agency (EPA) to support legislative efforts to ensure that oversight of security-related matters at our nation's community water systems and publicly owned treatment works remain under a single federal agency rather than under a bifurcated federal system. We believe this approach is the only way to ensure a consistent level of security at these facilities while avoiding duplicative and overly burdensome regulatory processes that would lead to increased costs to ratepayers with little appreciable public benefit or noticeable increase in security at these facilities.

As you know, the [*Chemical Facility Antiterrorism Act of 2009*](#) (H.R. 2868), which would reauthorize DHS Chemical Facility Anti-Terrorism Standards (CFATS) program, was approved by the House Homeland Security Committee in June and directs that jurisdiction over the security of wastewater treatment facilities fall under DHS. Meanwhile, the [*Drinking Water System Security Act of 2009*](#) (H.R. 3258), introduced by the Energy & Commerce Committee Chairman Henry Waxman (D-Calif.), places the protection of drinking water facilities within the jurisdiction of EPA.

Clearly, this is an unworkable situation. NACWA's position throughout these discussions has been that EPA has the long-standing expertise in water-wastewater security issues, having taken the lead on this issue since the tragic events of 9-11-2001. This long-standing EPA primacy, coupled with the Agency's jurisdiction over Clean Water Act issues more broadly, also led the House Transportation & Infrastructure Committee to weigh in on this jurisdictional issue and introduce the [*Wastewater Treatment Works Security Act of 2009*](#) (H.R. 2883). H.R. 2883 would house jurisdiction for wastewater security at EPA and establish a wastewater security program at the Agency.

As the Administration considers the policy implications of these approaches and determines its position, we want to highlight the problems a fragmented or duplicate regulatory authority would create for local communities if DHS and the EPA have split jurisdiction over security at water supply and water treatment utilities. The problems inherent in this approach are best seen in the example of water and wastewater utilities that are jointly owned and managed by a single entity. Under separate federal agency authorities, these facilities would face the prospect of being regulated by two different federal agencies for the same policy purpose. A splintered federal oversight approach would require utilities to report to two different federal agencies and establish and maintain two separate security protocols. This would result in increased costs to ratepayers with little appreciable public benefit or noticeable increase in security at these facilities, and, perhaps most importantly, could result in increased security vulnerabilities at wastewater and drinking water systems.

As you may know, NACWA has worked diligently with EPA's water security division on effective security protocols to protect POTWs against possible terrorist attacks, and will continue to do so to ensure that our members and POTWs in general are providing the utmost attention and consideration to their security concerns. In support of this effort, the Association developed a suite of vulnerability self-assessment tools (VSAT™) that has been distributed broadly for use by wastewater, drinking water and joint agencies. We have also developed a chlorine gas decision tree for DHS to help utilities assess the feasibility of switching to an alternative disinfection method.

NACWA recognizes the Administration's and Congress' desire to ensure the best possible protections for our nation's critical infrastructure and it is for this reason that we seek to have water and wastewater utilities included under a single program administered by the EPA. We urge this Administration to support maintaining federal oversight of security-related matters at water and wastewater utilities at the EPA.

Thank you for your consideration of this matter and we look forward to working with you on these efforts going forward. Please do not hesitate to contact me with any questions or concerns regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk".

Ken Kirk
NACWA Executive Director

Cc:
The Honorable Peter Silva, Assistant Administrator for Water, Environmental Protection Agency
The Honorable Rand Beers, Under Secretary for the National Protection and Programs Directorate, Department of Homeland Security
The Honorable Bennie Thompson, Chairman, House Homeland Security Committee
The Honorable Peter King, Ranking Member, House Homeland Security Committee
The Honorable James Oberstar, Chairman, House Transportation and Infrastructure Committee
The Honorable John Mica, Ranking Member, House Transportation and Infrastructure Committee