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Ken Kirk

March 8, 2010

Peter Silva

Assistant Administrator

Office of Water

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Ave., NW (4101M)

Washington, DC 20460

Via Facsimile

Dear Pete,

Thank you for taking time to meet with representatives from NACWA to discuss peak flow blending. As you know, this is a very important issue for NACWA and its members and one in which we have invested significant time and energy over the past decade.

As we noted during the meeting, since EPA's release of its 2005 proposed policy there has been significant confusion in the states and EPA regional offices regarding the appropriate approach to addressing peak flow blending in Clean Water Act (CWA) permits. Where EPA regional offices have sought guidance from Headquarters, the message has been clear – blending constitutes a bypass, and in accordance with the bypass regulations and the December 2005 proposed policy, a no feasible alternatives analysis must be completed before permitting can proceed. As our member from Lawrence, Kansas outlined during the meeting, this new reliance on EPA's bypass regulation and the proposed policy contradicts established state wet weather programs and penalizes communities that have made significant investments to provide additional treatment to peak wet weather flows.

EPA's assertion that peak flow blending should be handled under the bypass regulation is a new interpretation and a significant departure from long-standing practice. As recent as 2003, EPA felt that peak flow blending for sanitary sewer systems was not a bypass and could be authorized in a CWA permit. EPA has for decades sanctioned state permitting programs that specifically identify and authorize peak flow treatment scenarios at wastewater treatment plants. NACWA believes EPA cannot simply change its mind and apply an aggressive interpretation of the bypass



rule without a clear and final articulation of this policy shift that allows for appropriate public review and comment.

Peak flow treatment and blending have been important tools for clean water agencies for decades. As our member from Illinois detailed during the meeting, limitations on blending will have major financial impacts on communities in that state and nationwide, costing hundreds of millions of dollars. EPA must not continue to implement its CWA permitting program based on a proposed policy and a new interpretation of a decades-old rule.

NACWA continues to support the essence of the 2005 proposed policy, which was based on the agreement reached by NACWA and the Natural Resources Defense Council (NRDC), but cannot support EPA's current approach of implementing a proposed policy. There are major issues with the proposal that still must be resolved before it can be finalized and implemented effectively.

Again, thank you for meeting with us. I look forward to continuing this dialogue over the coming weeks and months and at NACWA's upcoming National Clean Water Policy Forum, April 18-21, in Washington, D.C. Thank you again for your attention to this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'K Kirk', with a stylized flourish at the end.

Ken Kirk

Executive Director

cc: Jim Hanlon, U.S. EPA

Kevin Shafer, Milwaukee MSD