

United States Senate
WASHINGTON, DC 20510

June 22, 2010

The Honorable Dianne Feinstein
Chairman
Senate Appropriations Committee
Subcommittee on Interior, Environment and
Related Agencies
131 Dirksen Senate Office Building
Washington DC, 20510

The Honorable Lamar Alexander
Ranking Member
Senate Appropriations Committee
Subcommittee on Interior, Environment and
Related Agencies
125 Hart Senate Office Building
Washington DC, 20510

Dear Chairman Feinstein and Ranking Member Alexander:

We respectfully ask that you include language in the Fiscal Year 2011 Interior, Environment and Related Agencies appropriations bill directing the Environmental Protection Agency (EPA) to update its guidance document "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development."

Wet weather discharges, including combined sewer overflows (CSO), continue to be a top enforcement priority for the EPA. Seeking to decrease the occurrence of CSOs, the agency has increased the number of enforcement actions against communities with combined sewer systems that have CSO events. In pursuing enforcement actions, EPA often requires communities to undertake projects to correct these events while requiring that sewer rates not increase above a certain percentage of Median Household Income (MHI).

Relying on MHI as the sole indicator of a community's financial ability to undertake these costly projects does not fully reflect a community's ability to make these investments. Important factors such as socioeconomic status of residents, current and future unemployment rates, ratio of residents on a fixed income, and future population demographic shifts are not considered when MHI is used as the sole determining factor. Given the ongoing recession and its effects on municipal budgets in Ohio and across the nation, EPA must recognize and be responsive to communities' and wastewater utilities' fiduciary responsibilities to their ratepayers.

Pursuit of these projects without taking these additional factors into consideration can quickly produce an untenable fiscal situation for a community. At a time when unemployment hovers near 10 percent and residents and industry are struggling to recover from the greatest downturn since the Great Depression, keeping water rates stable is an important component of our ongoing economic recovery.

Combined sewer systems serve roughly 772 communities and approximately 40 million people nationwide. During heavy rainfall, CSO discharges can lead to serious water pollution problems. In Ohio alone, EPA has identified almost \$6.3 billion in improvements necessary to address CSO problems in over 100 communities. Making these improvements is necessary, but we believe EPA has not been stepping up to the plate to assist the communities with the investments needed to mitigate the negative environmental and health effects brought about by antiquated wastewater systems. Many communities in Ohio and across the Nation are confronting staggering rates of unemployment and the potential loss of major employers. In the face of these severe economic woes, residents of these communities cannot afford additional rate increases. These problems are not limited to Ohio. California faces \$31 billion in wastewater treatment, water recycling, non-point source correction, and stormwater pollution prevention needs, including \$255 million in CSO control needs. Tennessee confronts over \$1 billion in wastewater treatment needs including \$285 million for CSOs.

If the federal government is going to impose costly mandates on struggling state and local governments, then it should provide funding for compliance with those mandates and flexibility in meeting them. We have introduced the Clean Water Affordability Act (S. 854), which requires EPA to update the "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development" (February 1997). This affordability guidance has not been updated in 13 years. Communities are struggling to meet these mandates, now more than ever before. At this particular time of economic distress, it is imperative that the EPA work with communities to address their water infrastructure needs without the added strain of an undue financial burden.

For this reason, we respectfully request that you include language to direct EPA to review and update its 1997 guidance document, "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development." Specifically, we request you include the following language:

FINANCING CAPABILITY GUIDANCE.

Not later than 180 days after the date of enactment of this Act, the Administrator shall update the document entitled "Combined Sewer Overflows–Guidance for Financial Capability Assessment and Schedule Development" dated February 1997. To carry this out, the Administrator shall—

- (1) collect and take into consideration information that can be used to assess the financial condition of permittees under the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.);*
- (2) consult with the affected States, municipalities, and other interested parties, as determined by the Administrator; and*
- (3) conduct a public outreach process*

Using stakeholder input, we are confident the EPA can provide new guidance that will meet environmental needs and help our communities make wise investments with public funds.

Sincerely,



George V. Voinovich
United States Senator



Sherrod Brown
United States Senator

Edward Brown

George V. Varnum