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August 3, 2010

The Honorable Barbara Boxer, Chairman
The Honorable James Inhofe, Ranking Member
Committee on Environment and Public Works
United States Senate
Washington, DC 20510

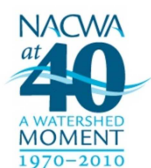
Dear Chairman Boxer and Ranking Member Inhofe:

On behalf of the National Association of Clean Water Agencies (NACWA), the leading advocacy organization representing the nation's municipal wastewater treatment agencies, I would like to offer comments on the "*Secure Water Facilities Act*" (S. 3598) and security issues generally at wastewater utilities. I would like for this letter to be included as part of the record for the Committee's July 28th hearing "*Protecting America's Water Treatment Facilities*."

First, let me say that NACWA understands policy-makers' interest in closing the perceived gap that exists in the federal government's security-related oversight programs of facilities that maintain chemicals of concern and that could potentially be the target of terrorist attacks. While Congress exempted publicly-owned treatment works (POTWs) and community water systems (CWS) when it created the Chemical Facilities Anti-Terrorism Standards (CFATS) Program in 2006, concerns have since been raised that these facilities should comply with federal security standards to ensure that our water and wastewater treatment capabilities cannot be compromised. While NACWA supports this overall policy objective, it is critical to recognize that any such program must be balanced with the requirements of the Clean Water Act and key site-specific considerations.

As Congress began the process of drafting legislation last year, a critical consideration from our members' perspective was to ensure that any security program for drinking water and wastewater utilities follow similar guidelines to each other and have Federal oversight responsibilities provided by the U.S. Environmental Protection Agency (EPA). For these reasons, we were pleased that legislation passed by the House, the *Chemical and Water Security Act of 2009* (H.R. 2868), reflected this policy priority.

A second important consideration was whether POTWs would be required to switch to "inherently safer technologies" (IST). NACWA does not support a federal mandate to require implementation of IST and we certainly would not support the emergence of legislation that places an IST requirement on the water sector and not on the chemical sector. Given the Senate Homeland Security and Government Affairs Committee ordered to be reported CFATS reauthorization legislation that does not contain an IST requirement for the chemical sector, NACWA will not support legislation that imposes any IST requirement on the water sector.



NACWA believes that the choice of treatment method for disinfection purposes must remain a local decision. As part of the wastewater treatment process, EPA regulations require that treated effluent meet strictly enforced discharge requirements. To meet these requirements, utilities undertake an extensive evaluation of disinfection methods based on local factors and individual permit specifications. When deciding which treatment method to utilize, factors such as climate, physical limitation of plant location, cost, safety and compliance with the Clean Water Act (CWA) are considered. Based on this wide variety of factors, use of an IST approach may not be possible for all wastewater utilities. However, an informal survey of NACWA members conducted in 2009, shows that clean water agencies are using IST when local factors enable them to do so. In fact, 66% of survey respondents indicated they no longer use gaseous chlorine in their disinfection process. Of the 33% that continue to utilize gaseous chlorine, 20% plan to switch to another disinfectant within a one to two year timeframe. We do not believe an IST mandate is necessary, rather we believe that decisions regarding IST should reside within the local community.

The nation's wastewater utilities take their security responsibilities with the utmost seriousness. As a new federal security program is being discussed, it is important to have an understanding of the measures already being implemented by the nation's clean water utilities. POTWs have fiduciary responsibilities to the public and, as such, most facilities have already implemented measures to protect against intentional acts after the 9/11 attack occurred. A 2007 survey found that an overwhelming number of clean water agencies have implemented significant security enhancements. For example, the survey found a large majority of utilities installed fencing (88%), gates (65%) and warning signage (64%) to reduce unauthorized access to their facilities. In addition, 85% of utilities reported that systems such as manual locks, electronic access controls, and visitor restrictions are in place to further reduce unauthorized access.

In addition, as was noted in testimony before the committee on July 28, 2010, NACWA participates in a water sector-wide council on security issues that has developed a suite of security-related standards for water and wastewater utilities to follow as well as tools for assessing vulnerabilities and for making necessary security upgrades. Vulnerability Assessments (VAs), Site Security Plans (SSPs) and Emergency Response Plans (ERPs) are tools that many POTWs already have in place.

A further policy consideration is access to critical security documents. In order to create the most effective VAs, SSPs and ERPs it is obviously important that supervisory and non-supervisory employees be included in this process. However, NACWA does not believe it is appropriate to require outside collective bargaining agents access to these sensitive documents. Protecting these documents is of critical importance as any information leaked will expose a utility's vulnerabilities by providing a road map for individual(s) intending to do harm. Limiting access is a prudent course of action if the intent is to safeguard communities to the maximum extent practicable.

Finally, NACWA believes that any legislation should provide funding to help utilities meet federal security requirements. Costs borne by wastewater utilities in conducting VAs, SSPs and ERPs could be extensive depending on the size of the system. Before taking these potential new requirements into account, utilities already face significant financial challenges. The recent

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EPA *Clean Watersheds Needs Survey* indicates that the total clean water infrastructure needs for the nation are \$298.1 billion. To meet this backlog, utilities are raising their rates significantly. In fact, NACWA's 2009 rate index survey shows that sewer rates increased by 9 percent during that year. In looking ahead, the index projects a 34 percent increase from 2008 levels over the next few years with double digit annual increases very likely. For these reasons, it is important that Congress provides funding to assist POTWs in meeting additional security-related federal mandates.

NACWA looks forward to working with the committee and providing input into this important discussion on ensuring the nation's clean water assets are protected by responsible and sound national policy. If you would like to discuss these comments further, please do not hesitate to contact John Krohn, NACWA Legislative Manager at 202-833-4655 or via email at jkrohn@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The signature is stylized with a large "K" and a cursive "Kirk".

Ken Kirk
Executive Director

CC: Members of the Environment and Public Works Committee