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Ken Kirk

January 10, 2011

The Honorable Eric H. Holder, Jr.
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530

Dear Mr. Attorney General:

I write to you on behalf of the National Association of Clean Water Agencies (NACWA) in reference to S. 3481, a bill passed in late December by Congress and signed by the President this month, which clarifies that federal government agencies are responsible for paying reasonable service charges to municipal stormwater management utilities under Section 313 of the Clean Water Act. NACWA represents the interests of the nation's publicly owned stormwater and clean water utilities, and we are grateful to the Department of Justice (DOJ) for the important input the Department provided in helping craft S. 3481 and elucidating the constitutional issues at hand. NACWA's public utility members are interested in seeing the legislation implemented as quickly and efficiently as possible in a manner that maximizes the ability of municipal stormwater utilities to collect these critical fees from federal facilities with minimal complication.

We understand that DOJ is currently working on guidance that will be distributed to all federal agencies advising them on how S. 3481 is to be implemented. As the guidance document is drafted, we strongly encourage DOJ to instruct all federal agencies to pay stormwater bills in the same way that all other utility bills are paid, using the same budget accounts that provide funds to pay other utility services. Payment of stormwater fees under this legislation should be done in the same manner and using the same accounting mechanisms through which all other utility invoices are paid, ensuring that federal agencies need not seek a special and separate appropriation just for payment of stormwater services.

Additionally, we request that the guidance not only direct federal agencies to pay reasonable stormwater service charges going forward but also to pay any outstanding charges for stormwater service that are still owed to municipal utilities. A number of stormwater agencies across the country continue to have difficulty collecting past due amounts from federal facilities within their service area that have not paid stormwater bills, with some amounts running into the millions of dollars. S. 3481 clarifies Congress's intent that the federal government has been responsible for paying these fees since the original enactment of the Clean Water Act, so it is only appropriate that existing outstanding amounts be paid. Payment of these past due bills will also help ease the unfair financial burden placed on other

ratepayers by the failure of certain federal facilities to cover their share of the cost for stormwater services.

Thank you again for DOJ's assistance in addressing this issue of critical importance to the nation's municipal stormwater and clean water utilities. If you have additional questions regarding this issue or if there is any way NACWA can be of further assistance in drafting the guidance for S. 3481, please do not hesitate to contact Nathan Gardner-Andrews, NACWA's General Counsel, at 202/833-2672 or ngardner-andrews@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: Thomas Perrelli, Associate Attorney General, U.S. DOJ
Ignacia S. Moreno, Assistant Attorney General, ENRD, U.S. DOJ
Robert Dreher, Principal Deputy Assistant Attorney General, ENRD, U.S. DOJ
Lisa Jackson, Administrator, U.S. EPA
Peter Silva, Assistant Administrator, Office of Water, U.S. EPA