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May 25, 2012

The Honorable Darrell Issa

Chairman

Committee on Oversight and Government Reform

U.S. House of Representatives

2157 Rayburn House Office Building

Washington, D.C. 20515

Dear Chairman Issa,

In response to your request, I would like to bring to the Committee's attention three instances where the National Association of Clean Water Agencies (NACWA) believes existing U.S. Environmental Protection Agency (EPA) regulations and/or enforcement efforts do not sufficiently take into account sound scientific principles, economic impacts, and/or environmental benefit.

**Sewage Sludge Incineration**

In March 2011, EPA promulgated rules imposing new regulations under §129 of the Clean Air Act (CAA) for air emissions from incinerators burning domestic sewage sludge at publicly owned treatment works (POTWs). NACWA is concerned about the potential impact these regulations may have on ratepayers, especially given the fact that these regulations were not based on appropriate statutory authority.

For 46 years Congress has regulated the disposal of sewage sludge pursuant to §405 of the Clean Water Act (CWA). By applying §129 technology standards for sewage sludge incineration emissions, EPA is not only ignoring its CWA statutory authority, but it is also exceeding specific authority in the CAA that directs hazardous air emission standards applicable to POTWs with sewage sludge incinerators to be developed pursuant to the guidelines in §112. Furthermore, NACWA believes EPA's estimate of \$200 million for the total cost to comply with this rule is woefully off the mark. Based on our own estimates, costs are anticipated to exceed \$450 million.

NACWA urges Congress to clarify the law that POTWs are to be regulated in accordance with §405 of the CWA and pursuant to §112 of the CAA.

**Sanitary Sewer Overflows**

From 1998-2002, documented expenditures on Sanitary Sewer Overflow (SSO) controls at POTWS exceeded \$4 billion, and EPA's 2000 Clean Water Needs Survey

estimated that at an additional \$88.8 billion will be required to control SSOs over the next 20 years. In the absence of a comprehensive SSO policy, EPA has implemented a zero-tolerance enforcement standard on SSOs that fails to appropriately balance cost with environmental benefit. This standard requires utilities to eradicate all SSOs — which as an engineering matter is a known impossibility — without there being any shield or defense to such actions and often without any meaningful water quality benefit. Just as some policies may over-reach the bounds of sound science and cost-effectiveness, aggressive enforcement in the absence of a sound policy is similarly not a workable approach.

NACWA urges Congress to ensure that EPA establishes a viable, sound and flexible SSO policy to better manage the occurrence of SSOs.

#### **Money Matters, Integrated Planning/Permitting, and Regulatory Prioritization**

NACWA supports EPA's work to develop an integrated planning approach to help communities better prioritize the growing array of requirements under the Clean Water Act (CWA). Integrated planning, if done correctly, would enable municipalities to prioritize competing and costly wet weather, stormwater, nutrient-related, and other CWA requirements in order to ensure the maximum water quality benefit for ratepayers. This approach optimizes limited community resources by encouraging more sustainable and innovative solutions, such as green infrastructure, and adaptive management approaches that improve water quality and enhance the vitality of local communities.

NACWA urges Congress to support EPA's integrated planning effort and help make sure that the Agency supports municipalities and States seeking to advance this approach. In part, this can be accomplished through the extension of permit terms and potential other Clean Water Act fixes that would guarantee the success of the integrated planning initiative.

With the total reported CWA regulatory compliance costs for the nation nearing \$300 billion — which is separate and apart from the hundreds of billions needed for upgrading and repairing aging and ailing clean water infrastructure systems — clean water agencies and the domestic and industrial ratepayers they serve are under immense and unparalleled pressure. It is imperative that any new regulations are established on the firmest scientific and legal grounds while also taking into full account the very real financial constraints municipal wastewater treatment plants are facing.

Should you or your staff have any questions about the abovementioned cases, please do not hesitate to contact NACWA's Hannah Mellman at [hmellman@nacwa.org](mailto:hmellman@nacwa.org) for more information.

Sincerely,

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

Ken Kirk  
Executive Director