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Ken Kirk

March 20, 2008

The Honorable James L. Oberstar
Chairman

House Transportation & Infrastructure Committee
U.S. House of Representatives
Washington, D.C. 20510

Dear Chairman Oberstar:

The National Association of Clean Water Agencies (NACWA), representing the nation's publicly owned wastewater treatment agencies that serve a majority of the sewered population of the United States, would like to express its strong concerns regarding recent legislative activity in the House Homeland Security Committee. The *Chemical Facility Anti-Terrorism Act of 2008* (H.R. 5577) was introduced on March 13 by Rep. Bennie Thompson (D-Miss.), chair of the committee, and would reauthorize and make permanent the Chemical Facility Anti-Terrorism Standards (CFATS) issued in 2007. H.R. 5577 would, for the first time, regulate water and wastewater utilities under CFATS in the same manner as for-profit chemical manufacturers and transfer authority over water and wastewater security matters from the U.S. Environmental Protection Agency (EPA) to the Department of Homeland Security (DHS).

This effort to impose security requirements on publicly owned treatment works (POTWs) disregards the well-established jurisdiction of the House Transportation & Infrastructure (T&I) Committee, whose oversight includes wastewater infrastructure programs, the *Clean Water Act*, and wastewater security needs. Since Sept. 11, 2001, all House bills dealing with security-related matters at wastewater agencies have been referred to the T&I Committee. H.R. 866, the *Wastewater Treatment Works Security Act of 2003*, was introduced and referred to T&I in 2003. The bill authorized \$200 million for public wastewater agencies to conduct vulnerability assessments and make security enhancements at their facilities. It passed the House by a bipartisan vote of 413 – 2 and clearly set a precedent for the continued assertion by T&I of jurisdiction over wastewater treatment agency security.

Rep. Albert Wynn (D-Md.), chair of the House Energy and Commerce Subcommittee on Environment and Hazardous Materials, which has jurisdiction over the Safe Drinking Water Act, introduced legislation on March 5, the *Chemical Facilities Security Act of 2008*, H.R. 5533, that reaffirms that committee's jurisdiction over drinking water facilities and other entities covered by H.R. 5577. As a result, H.R. 5577 has been referred for consideration in both the House Homeland Security Committee and the House Energy and Commerce Committee.

NACWA recognizes Congress' interest in ensuring the best possible protections for the nation's critical infrastructure but including publicly owned treatment works (POTWs), whose sole mission is the protection of public health and the environment, into regulations aimed at securing private chemical plants is not a sound approach. POTWs are already heavily regulated under the Clean Water Act (CWA), which is administered by EPA and overseen by your committee. NACWA and others in the water sector have worked diligently with EPA's water security division and DHS on effective security protocols to protect their facilities. The CFATS bill has the potential to undermine both this work and EPA's ability to implement the CWA by giving overly broad discretion to DHS.

Moreover, H.R. 5577 is vague as to which facilities would actually be covered, leaving it up to DHS to assign each "to one of at least four risk-based tiers" to be established later. In fact, DHS only last year issued CFATS regulations and has yet to identify the universe of high risk facilities. More than 16,500 wastewater treatment plants provide much needed service to the American people. Most operate in small communities with limited resources that already struggle to meet increasing federal regulatory requirements aimed at public health and environmental protection. You are already well aware of funding challenges facing the nation's POTWs in the face of increased regulatory requirements, aging infrastructure, and growing population demands.

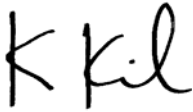
Another significant concern to NACWA are provisions in the bill giving DHS the discretion to determine whether a facility should be required to switch to alternate technologies or chemicals. This discretion need not be based on how these changes would affect a POTW's ability to continue to meet round-the-clock CWA requirements critical for the protection of public health and the environment. In fact, many POTWs have already chosen to switch to other technologies, but these decisions were made after careful consideration of their ability to provide continued service at an affordable cost to the consumer. These decisions should remain at the local level, working in consultation with EPA.

The bill authorizes only \$225 million over three years to "provide funding for methods to reduce the consequences of a terrorist attack," with the largest sum of \$100 million being allotted in the first year. This limited funding is for *all* entities covered by the bill, not just wastewater treatment plants. Such funding is simply insufficient to meet the potentially enormous costs of the CFATS requirements.

The regulations would be duplicative as wastewater treatment plants have worked in collaboration both with EPA and DHS to develop methods for assessing plant vulnerabilities and to formulate plans to address security concerns. NACWA developed a suite of vulnerability self-assessment tools (VSAT™) that was distributed broadly for use by wastewater and drinking water agencies. NACWA also worked with DHS to develop its chlorine gas decision tree to help utilities assess the feasibility of switching to an alternative disinfection method. The actions taken by the water sector to address security concerns have been held up as a model for other industrial sectors.

Clearly, any new legislation focusing on security at wastewater treatment facilities should fall under the oversight of the T&I Committee. NACWA fully supports the committee in any efforts to assert jurisdiction over the wastewater treatment provisions contained in H.R. 5577. We look forward to working with you on these efforts. We appreciate your time and attention to this matter.

Sincerely,

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

Ken Kirk
Executive Director
NACWA

Cc: The Honorable John L. Mica;
The Honorable Eddie Bernice Johnson;
The Honorable John Boozman