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**Ken Kirk**

July 17, 2008

The Honorable Frank R. Lautenberg  
United States Senator  
324 Hart Senate Office Building  
Washington, D.C. 20510

The Honorable David Vitter  
United States Senator  
516 Hart Senate Office Building  
Washington, D.C. 20510

Re: **The Sewage Overflow Right-to-Know Act (S. 2080)**

Dear Chairman Lautenberg and Ranking Member Vitter:

As your Subcommittee considers moving forward with S.2080, the *Sewage Overflow Right-to-Know Act*, the National Association of Clean Water Agencies (NACWA) seeks to ensure that the legislation fully addresses the concerns of the nation's 16,000 publicly owned treatment works (POTWs).

NACWA played a critical role in the recently passed House version of the legislation (H.R. 2452, *the Sewage Overflow Community Right-to-Know Act*) by participating in a months-long negotiating process with American Rivers and staff from the Transportation & Infrastructure Committee as well as Rep. Tim Bishop's office. We believe these negotiations were carried out in good faith and resulted in a significantly improved and more workable piece of legislation in the form of a substitute amendment and a detailed accompanying report setting out the intent of the House. That being said, NACWA was not afforded an opportunity to review the final version of the legislation, or the accompanying report, with its public agency members in advance of its passage in June. NACWA has since shared these documents with its membership and Board of Directors, and several key concerns with the bill have been raised. We understand that your subcommittee is considering using H.R. 2452 as a substitute for S.2080 but that you remain open to additional changes that can further improve the House bill. This letter outlines several concerns that, if addressed, would significantly improve the bill:

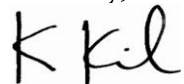
- NACWA believes the definition of what constitutes a sanitary sewer overflow (SSO) needs to be reworked. First, NACWA's understanding in the negotiations was that the language in the definition defining SSOs to include "overflows or releases of wastewater in the United States that do not reach waters of the United States" was going to be deleted. NACWA continues to believe this is an unwarranted expansion of Clean Water Act jurisdiction and that such changes are

better left to specific legislative efforts on the jurisdictional issues such as the *Clean Water Restoration Act*. At the same time, NACWA also believes that any re-definition of what constitutes an SSO should be explicitly limited in the legislation to the notification and reporting requirements set out in the bill. Such an expressed statement in the legislation would go far toward allaying the concerns of several public agencies and organizations which fear that the current definition in H.R. 2452 creates a new federal liability for unavoidable overflows. NACWA believes that the negotiating parties' intent was to limit the bill's reach solely to the monitoring, notification, and reporting requirements contained in the bill and that, therefore, such a change would be consistent with the intent of the negotiations.

- NACWA believes that H.R. 2452's report language does an excellent job characterizing the need to expand the bill's requirements to satellite collection systems, noting that they are responsible for the majority of SSOs. Throughout the negotiating process great care, however, was taken to ensure that POTWs would not be held responsible for monitoring, notifying or reporting overflows from satellite collection systems over which POTWs have no authority. To the extent the Senate can craft a provision in its bill that both includes satellite collection systems and ensures that POTWs are not legally responsible for these systems' monitoring, notification or reporting activities, NACWA believes this would be an enormous step in the right direction. Given the bill's public health objectives, it seems that capturing in the legislation those responsible for the majority of SSOs – satellite collection systems – would be consistent with the spirit of the negotiation.
- NACWA believes that federal funding should be made available to carry out the bill's requirements, above and beyond H.R. 2452's expansion of clean water state revolving fund (CWSRF) eligibilities to include the activities required by the bill. A funding provision would ensure that scarce municipal dollars, especially in the current economic climate, are not spent on monitoring, reporting and notification instead of projects aimed at controlling overflows. As the report points out, according to EPA's 2000 Clean Water Needs Survey, it would cost \$50.6 billion and \$88.5 billion respectively to address existing CSOs and SSOs.
- NACWA further believes that there needs to be maximum flexibility for all utilities as it relates to the monitoring provisions contained in H.R. 2452. This is especially critical for small and medium-sized communities. The report offers some insight into how the U.S. Environmental Protection Agency (EPA) should further define a "feasible" methodology, technology, or management program for monitoring sewer overflows. It offers ten factors to consider including the cost of the monitoring, as well as the uses for the waterways into which the overflows discharge. At a minimum these factors should be part of the Senate legislation, but additional language ensuring maximum municipal flexibility in determining its monitoring programs would be helpful.
- NACWA also supports the request by the California Association of Sanitation Agencies (CASA) that there needs to be a mechanism for informing permittees of the notification requirements under the bill, which become enforceable upon EPA's completion of its rulemaking process. This would ensure there is no violation of the permittees' due process rights.

NACWA appreciates your attention to these matters and would be happy to discuss these issues with you further as the drafting process progresses. Addressing these issues would greatly improve the legislation and present the Nation's clean water agencies with a more workable national program that ensures consistency in the notification and reporting of overflows. We look forward to continuing to work with you on this issue and please contact Adam Krantz at 202/833-4651 or [akrantz@nacwa.org](mailto:akrantz@nacwa.org) with any questions or concerns.

Sincerely,



Ken Kirk

NACWA Executive Director