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Ken Kirk

November 15, 2010

Members of the United States House of Representatives
Washington, DC 20515

Dear Congressperson:

On behalf of the National Association of Clean Water Agencies (NACWA), I am writing to urge your strong support for enacting legislation to require the federal government to pay local fees for stormwater management services before the 111th Congress adjourns. S. 3481, a bill to amend the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act) to clarify federal responsibility for stormwater pollution control, passed the Senate Environment and Public Works Committee unanimously in June and is ready for Senate action as soon as possible. A companion House bill, H.R. 5724, is also ready for action. Similar language is also contained in S. 1816, the *Chesapeake Clean Water and Ecosystem Restoration Act* which is awaiting final action by the full Senate as part of an omnibus bi-partisan Public Lands, Waters, and Wildlife package.

The legislation is necessary to reverse decisions like the Government Accountability Office's (GAO) September decision finding that federal facilities located in the District of Columbia can claim sovereign immunity and do not have to pay for stormwater fees levied by the District of Columbia for stormwater management services as required by the District's federally issued stormwater permit. This decision will cost the City in excess of \$2.64 million annually, representing 20% of the total cost of stormwater management services provided by the District.

The GAO decision follows similar decisions in other parts of the country in which the federal government has refused to pay local municipalities for stormwater management services, such as the U.S. Forest Service in Washington State, Department of Defense installations in Texas and federal installations in the States of Tennessee and Kentucky, claiming these fees amount to unconstitutional taxation by local authorities. NACWA has heard from our members in several additional states that are experiencing similar resistance, including Colorado, Florida, Georgia, Ohio, Oregon and Virginia.



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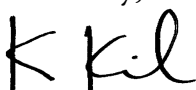
The GAO decision comes despite the fact that Sec. 313 of the Clean Water Act (CWA) exempts the federal government from claiming sovereign immunity in refusing to pay for reasonable charges levied by municipalities for clean water management services, including managing stormwater runoff. Sec. 313 of the CWA expresses Congress's clear intent for the federal government to pay its share of costs related to control and abatement of water pollution, but unfortunately a number of federal government agencies have mistakenly determined that this responsibility does not extend to stormwater management services.

Congress must resolve this confusion as soon as possible and step in to establish clear national policy regarding the federal government's responsibility for paying its share of the costs to improve water quality in communities where it has facilities. Unfortunately, local stormwater agencies have no choice but to provide stormwater services to federal facilities located in their municipalities. If federal facilities cannot be assessed their fair share of the costs related to stormwater runoff from their facilities, this void will place a disproportionate financial burden on other ratepayers, including homeowners, who will be forced to bear the brunt of the substantial cost of complying with increasingly stringent stormwater requirements pursuant to municipal separate storm sewer system (MS4) permits — a burden that is especially onerous in the current economic recession.

The GAO decision sets a dangerous precedent and must be reversed. The federal government cannot be allowed to impose strict controls on stormwater runoff on communities but exempt itself from paying the costs associated with them in communities in which the federal government has facilities.

NACWA strongly urges Congress to act on this measure before it adjourns in December. Thank you very much for your consideration of this matter. Please do not hesitate to contact me or Patricia Sinicropi, NACWA's Legislative Director, at psinicropi@nacwa.org or 202/533-1823, should you have comments or questions.

Sincerely,

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

Ken Kirk
Executive Director