Anchorage Water & Wastewater Utility

General Manager's Office

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Mayor
Ethan Berkowitz

Board Chair
David M. Richards

July 8, 2015

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

Dear Senator Murkowski,

I am writing to express my concern with provisions inserted in the Senate's proposed Fiscal Year (FY) 2016 Interior, Environment and Related Agencies Appropriations Bill. If enacted, the bill may have unintended consequences that could adversely affect wastewater utility ratepayers here in Anchorage and Girdwood, Alaska, in addition to many other communities within and beyond the Great Lakes region. I urge you to reconsider these provisions.

Section 428 introduces a prohibition of sewage dumping into the Great Lakes. While this is a noble gesture, it would seem to impinge upon or duplicate existing law established through the National Pollutant Discharge Elimination System established long ago under Section 402 of the Clean Water Act. Furthermore, Section 428 directly contradicts and undermines legislation Congress enacted in 2001 codifying the 1994 Combined Sewer Overflow (CSO) Control Policy, with which the majority of Great Lakes dischargers are currently complying. The CSO Control Policy sets forth national goals and standards for the reduction of CSOs by publicly-owned treatment works (POTW) and requires the development of Long-Term Control Plans (LTCP) to comply with these standards.

The CSO Control Policy was carefully crafted by the Environmental Protection Agency and key state, municipal and environmental stakeholders. The policy recognizes that chasing a goal of zero CSOs would waste precious resources which could be used to address other water quality challenges. The language in Section 428 of the Senate EPA spending package proposes a dramatic shift in the clean water policy that would result in negligible water quality improvements while imposing significant costs to ratepayers throughout the Great Lakes region. At the very least, such a dramatic policy shift should be considered through the normal legislative process. This would allow the policy and cost implications to be fully debated and the impacted communities to be fully heard. A process though congressional appropriations would undermine public participation and does not allow stakeholders to air full concerns.

Of greater concern for Anchorage ratepayers is the introduction into statute of definitions that could have far-reaching effects if interpreted by EPA to extend to jurisdictions beyond the Great Lakes. In 2013, the 8th Circuit Court of Appeals, provided clarification on the issues of bypass, secondary treatment, and water-quality-based discharge permitting in its decision on *Iowa League of Cities v. EPA* (711 F.3d 844(8th Cir.2013)). The decision vacated EPA's policy letter that prohibited blending at wastewater treatment plants. The Court ruled that EPA's policy was procedurally invalid and exceeded statutory authority by imposing secondary treatment standards internally rather than at the point of discharge to navigable waters of the US.

EPA regulations stemming from the Clean Water Act (CWA) define "secondary treatment" only in terms of effluent quality: Biochemical Oxygen Demand and Total Suspended Solids in the effluent shall not exceed 30 mg/L on a 30-day average basis, and removal of these water quality pollutant parameters shall not be less than 85% on a 30-day average basis. The means by which these treatment levels are to be obtained are not addressed in the CWA nor in regulation. Therefore, during peak wet weather flows, blending of sidestream treatment with complete mainstream treatment would be in accordance with regulation and NPDES permit conditions, provided secondary treatment effluent limitations and water quality standards are not violated.

We have been working closely with the Alaska Department of Environmental Conservation (ADEC) to re-authorize the discharge permit for Girdwood Wastewater Treatment Facility since the State obtained primacy in 2008 for Publicly Owned Treatment Works discharge permitting under the Clean Water Act. ADEC regulators have repeatedly advised AWWU that, during peak weather flows, blending sidestream flows with enhanced biological treatment flows could not be considered since EPA would consider the blending to constitute an illegal bypass. Over the course of the ensuing seven years of negotiations on this permit, we have made a number of improvements to the collection system that reduce our peak wet weather flows and our dependence on blending for economical treatment. However, we still believe that blending, as allowed by the 8th Circuit decision, could save ratepayers throughout Anchorage millions to tens of millions of dollars in construction and operation expenses for the Girdwood plant while meeting regulatory requirements, permit conditions, and water quality standards that protect the beneficial uses of Glacier Creek.

This discussion of blending versus bypass in Girdwood is relevant to Section 428 of the Appropriations bill in that the proposed language of the section seeks to redefine terms in statute that already exists in regulation. Of particular concern is the idea that the definition of "treatment facility" in this section, references "all units used by a publicly owned treatment works…". Rather, it seems that the 8th Circuit opinion would agree that treating all influent wastewater with all units of a treatment facility may not be necessary to achieve the secondary treatment standard or to protect water quality criteria in the receiving water.

Another alarming definition in this proposed statute is that of "partially treated sewage", which is identified in Section 428 (1)(D) as sewage that "(i) is not treated to national secondary

treatment standards for wastewater; or (2) is treated to a level less than the level required by the applicable National Pollutant Discharge Elimination System permit."

As you are aware, our largest facility, the Asplund Wastewater Treatment Facility, discharges into Cook Inlet at Point Woronzof, in accordance with the EPA permit that is modified in accordance with Section 301(h) of the Clean Water Act. The 301(h) modification allows discharge of wastewater receiving "primary" treatment, a lower standard than secondary treatment as defined above. If the proposed addition to statute provided by Section 428 of this bill were to be allowed, I envision potential for encroachment on Section 301(h).

The longstanding 301(h) permit at Asplund has continually proven to be a cost-effective means of protecting public health, water quality, and habitat in Cook Inlet. Nearly 30 years of monitoring has demonstrated absolutely no adverse effects, including negligible potential for impacts to endangered species, including the Cook Inlet beluga whale. If the Asplund 301(h) modification is denied in future permitting actions, due to intentional or inadvertent misconstrued language in this bill, unnecessary plant expansion would cost Anchorage Water and Wastewater Utility ratepayers in excess of hundreds of millions of dollars.

For the foregoing reasons, I urge you to strip Section 428 from the FY16 Interior, Environment and Related Agencies Appropriations package.

If you have any further questions concerning impacts to Anchorage Water & Wastewater Utility ratepayers, please do not hesitate to contact me at brett.jokela@awwu.biz or (907) 786-5511.

Sincerely,

J. Brett Jokela, P.E.
General Manager

cc: Mayor Ethan Berkowitz, Municipality of Anchorage