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Ken Kirk

April 5, 2007

Senator Joseph R. Biden, Jr.
United States Senate
201 Russell Senate Office Building
Washington, D.C. 20510

Re: The introduction of pending legislation modeled after S.2920

Dear Senator Biden:

Thank you for the opportunity to provide input into the pending introduction of legislation being modeled after *The Community Water Treatment Hazards Reduction Act of 2006* (S. 2920). The National Association of Clean Water Agencies (NACWA) represents the interests of the Nation's public wastewater treatment plants from coast to coast. These public agencies serve the public interest and carry out the lofty water quality objectives of the Clean Water Act.

Several NACWA members have provided detailed comments to your office directly, providing valuable input from geographically diverse areas. Echoing its members' concerns with S.2920, the comments below provide some recommended changes to improve the bill before its introduction. NACWA believes S. 2920 offers a solid starting place but has several vital concerns. First and foremost, the decision about whether to switch from chlorine gas to an alternative treatment technique must remain up to the municipality itself. The factors in making the switch are complex, and include but are not limited to meeting the requirements of the Clean Water Act, ensuring public health, affordability/cost concerns and the availability of alternative treatment options. A substantial number of NACWA members have already switched away from chlorine gas or have invested significant sums in security upgrades for its storage and handling.

As such the Association remains opposed to a one-size-fits-all mandatory approach that seeks to eliminate the use of chlorine gas. Instead, NACWA seeks to ensure that any legislation takes an incentives-based approach that recognizes the often complex, site-specific considerations that go into such a decision.

Although the fact that S.2920 sought to provide \$150,000,000 per year in grant funding demonstrates a commitment for Congress to be an active funding partner in this effort, NACWA questions whether this funding level will suffice to help make the upgrades that would be required by this legislation at the thousands of drinking water and wastewater treatment facilities potentially covered by it. It is also unclear if the grants are intended to cover 100% of the capital costs to switch and clarification on this point is vital to determine the Association's position on this legislation.

Furthermore, in a discussion with staff working on this legislation, NACWA was informed that there would be no requirement to switch unless grant funding was in fact provided to covered utilities. NACWA's review of S. 2920, however, finds no such language in the bill. The closest language to this is on page 13, line 20(B), which states that "subject to the availability of grant funds," the Administrator has 90 days to consider the utility's feasibility study after which time he/she "shall issue an order" requiring the utility to make the switch. NACWA would prefer to see clear language specifying that if utilities do not receive grant funding to make the switch from chlorine gas they are not required to take any further steps. Such language would go far toward ensuring that the federal government's own funds are on the line, which, in turn, will also help ensure that the federal government will be accountable in making determinations as to which utilities should make the switch.

Also, several NACWA members provided your office with detailed comments regarding why the 90 day deadlines used throughout the legislation are simply unworkable. As one member noted in comments on S.2920, 90 days would likely provide an insufficient timeframe to hire a consultant let alone complete a detailed feasibility analysis on switching to a chlorine gas alternative. This point is of critical importance to NACWA members and the Association implores staff to review and replace the timeframes with something more reasonable.

Additionally, it is critical that the information contained in any feasibility assessments performed pursuant to this legislation be fully protected to the maximum extent possible given the sensitive nature of such information. NACWA would prefer that such assessments not be sent to the federal government but that the legislation provide the appropriate EPA officials with the opportunity to review the documents on-site at the utility. If this is not possible the legislation should expressly state that full Freedom of Information Act protection covers these assessments.

NACWA also wants to bring to your attention the availability of the *Chlorine Gas Decision Tool for Water and Wastewater Utilities*, a CD-based application that NACWA developed for the Department of Homeland Security's (DHS) Advanced Research Projects Agency. The Tool provides both water and wastewater utilities with a user-friendly, but thorough means of evaluating alternatives to chlorine gas disinfection and would help meet the goals of any requested feasibility assessments contained in the legislation.

Finally, the Association is pleased that in S.2920 jurisdiction was placed with the U.S. Environmental Protection Agency (EPA) with consultation from the Department of Homeland Security. This should remain unchanged in the pending legislation. NACWA also incorporates by reference the comments of the Association of Metropolitan Water Agencies (AMWA), which represents the Nation's drinking water utilities. Drinking water and wastewater utilities have common concerns and both would be heavily impacted by the pending legislation.

NACWA appreciates your leadership on this important endeavor. As public servants, the Nation's wastewater treatment works are ahead of the curve in seeking to guarantee the security of their communities' public health and environmental well-being. NACWA looks forward to working with you and your staff further as this legislation moves forward.

Ken Kirk



Executive Director