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Adam Krantz

February 19, 2016

The Honorable James M. Inhofe
Chairman
Senate Committee on Environment and
Public Works
410 Dirksen Senate Office Building
Washington, DC 20510-6175

The Honorable Barbara Boxer
Ranking Member
Senate Committee on Environment and
Public Works
456 Dirksen Senate Office Building
Washington, DC 20510-6175

The Honorable Frederick S. Upton
Chairman
House Committee on Energy and
Commerce
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Frank Pallone, Jr.
Ranking Member
House Committee on Energy and
Commerce
2322A Rayburn House Office Building
Washington, DC 20515

Dear Chairman Inhofe and Ranking Member Boxer, and Chairman Upton and Ranking Member Pallone:

The National Association of Clean Water Agencies (NACWA) commends Congress' attention to reform the Toxic Substances Control Act of 1976 (TSCA) to better protect public health and the environment from the impacts of toxic substances. NACWA's members - public wastewater and stormwater utilities nationwide working to protect our critical water resources - have growing concerns about the impacts of various chemicals on the wastewater treatment processes and on water quality overall. Specifically, as the primary regulated municipal community under the Clean Water Act (CWA), our members are concerned about their ability to protect treatment facilities and receiving waters from chemicals given the preemption provisions in proposed TSCA legislation. As the House and Senate work towards reconciling their respective bills, NACWA urges you to consider our members' perspective on the following issues:

Exceptions for Preemption Must Apply to Wastewater Utilities

Sections 17(c-g) of S.697 of the *Frank R. Lautenberg Chemical Safety for the 21st Century Act* outline exceptions from federal preemption for state statutes and administrative actions. These important exceptions provide states and their political subdivisions

the ability to adopt and enforce protections for public health or the environment within the framework of TSCA, and NACWA urges their inclusion in final legislative language.

However, NACWA further urges you to ensure - by adding additional legislative language if necessary - that these exceptions extend to publicly owned treatment works (POTWs) as entities complying with, and in some instances acting as co-regulators under, the CWA. Although some POTWs are operated by counties or cities and would be considered political subdivisions of the state, others are independent entities, such as special district authorities, and may not be considered a political subdivision of a state. In fact, a recent Kentucky Court of Appeals decision held that special districts are not political subdivision of the state. TSCA must ensure POTWs have the same preemption exceptions as states and their political subdivisions.

Utilities Must be Able to Apply Local Protections

Preemption exceptions for POTWs are critical to ensure that TSCA does not limit POTWs' ability to protect wastewater treatment processes, receiving waters, and biosolids through additional local action if necessary. POTWs primarily take actions to comply with the federal CWA, which in many instances is implemented by the states. In certain circumstances under the CWA, POTWs also act as co-regulators, regulating discharges from industries and businesses through the national pretreatment program. The pretreatment program enables a POTW to protect itself from local industrial discharges that have the potential to interfere with POTW operations or degrade its biosolids, and empowers a POTW to protect receiving water bodies from pollutants that pass through the treatment process untreated. POTWs may use Categorical Pretreatment Standards established by EPA, and they may also establish their own local limits.

However, outside the scope of the industrial pretreatment program, chemicals used in homes and some businesses may also harm the wastewater treatment process, receiving water, or biosolids. The POTW, municipality, or state may therefore need to limit use of a product through local ordinance or other local action for pollution prevention. This ability to limit chemicals at the local level must be allowed under TSCA.

For example, copper sulfate is a product regulated under federal law for which additional local restrictions may be necessary by a POTW. Copper sulfate products are available in the marketplace to control roots in pipes connecting homes to the sewer system, and are regulated under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). However, the products can lead to elevated copper levels at wastewater treatment plants. POTWs that need to control copper discharges may need to limit the use of copper sulfate-based root control products in their service areas, even though these products are approved for use elsewhere.

Preemption Must Apply When Final Rule is Implemented by EPA

Finally, NACWA urges that any preemptions of state or local action are triggered no earlier than when any EPA final rule is implemented. As described above, retaining the ability to act on federally-regulated chemicals in response to local water issues is critical to POTWs. This authority is similarly important for chemicals which may not trigger federal action and for chemicals which trigger federal assessment but are not found to warrant federal rulemaking.

NACWA members are on the front lines of protecting public health and the environment by providing wastewater treatment and maintaining vital infrastructure. We appreciate your attention to ensuring that POTWs maintain existing rights and flexibility as they pursue permit compliance, co-regulation, and non-

NACWA Comments on TSCA

February 19, 2016

Page 3 of 3

regulatory actions to protect public health and water quality in their service area. Please do not hesitate to contact Cynthia Finley at 202/533.1836 or cfinley@nacwa.org, or Kristina Surfus at 202/833.4655 or ksurfus@nacwa.org, if you have questions or would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Krantz". The signature is fluid and cursive, with a large loop at the end.

Adam Krantz
CEO