

COALITION MEMBERS

Agencies

Charles River Pollution Control District
City of Haverhill
City of Holyoke
City of Marlborough
City of New Bedford
South Essex Sewerage District
Springfield Water and Sewer Commission
Town of Concord
Town of Framingham
Town of Franklin
Town of Jaffrey, NH
Town of Medfield
Town of Milford
Town of North Reading
Town of Northbridge
Town of Southbridge
Town of Yarmouth
Upper Blackstone Water Pollution Abatement District

Affiliates

Cherry Valley Sewer District
City of Beverly
City of Chicopee
City of Peabody
City of Salem
City of Springfield
City of Worcester
Town of Bellingham
Town of Danvers
Town of Marblehead

Corporate

Camp Dresser & McKee, Inc.
Kleinfelder/SEA Consultants
Weston & Sampson

Legal

Anderson & Kreiger LLP
Bowditch & Dewey

December 14, 2010

The Honorable Scott Brown
317 Russell Senate Office Building
Washington, DC 20510

Via fax to 202-228-2646

Dear Senator Brown:

On behalf of the Massachusetts Coalition for Water Resources Stewardship, 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. Utilities in several additional states including

Colorado, Florida, Georgia, Ohio, Oregon, Virginia and Michigan are experiencing similar resistance.

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.

The Massachusetts Coalition for Water Resources Stewardship represents more than 30 public utilities and municipalities in Massachusetts. We strongly urge 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, should you have comments or questions. I can be reached at 508-799-1430 or MoylanR@worcesterma.gov.

Sincerely,



Robert L. Moylan Jr., P.E.
Commissioner of Public Works and Parks
City of Worcester