

**American Oceans Campaign · American Rivers · Bluewater Network · Coast Alliance ·
Defenders Of Wildlife · Earthjustice Legal Defense Fund · Environmental Defense ·
Environmental Working Group · Friends Of The Earth · Mineral Policy Center ·
National Audubon Society · National Parks And Conservation Association ·
Natural Resources Defense Council · Sierra Club · Trout Unlimited ·
The Ocean Conservancy · U.S. Public Interest Research Group**

September 20, 2001

Honorable Barbara A. Mikulski, Chair, Subcommittee on VA-HUD-Independent Agencies,
Senate Committee on Appropriations
Honorable Christopher S. Bond, Ranking Member, Subcommittee on VA-HUD-Independent
Agencies, Senate Committee on Appropriations
Honorable James T. Walsh, Chair, Subcommittee on VA-HUD-Independent Agencies,
House Committee on Appropriations
Honorable Alan B. Mollohan, Ranking Member, Subcommittee on VA-HUD-Independent
Agencies, House Committee on Appropriations

Dear Conferees:

We recognize that, over the next several weeks and months, the Congress will be very heavily focused on responding to the recent tragedy that befell our nation. We offer our best wishes to you during this difficult time.

We understand that although it may be some time before you complete work on appropriations bills for Fiscal Year 2002, we wanted to take this opportunity on behalf of our organizations to share with you our views on the VA-HUD and Independent Agencies Appropriations bill. By funding programs that promote clean air, clean water, safe drinking water, and the clean-up of hazardous wastes, in many respects, both the House and Senate bills are a substantial improvement over the President's budget request. However, we believe that the final conference report should correct funding shortfalls, as well as remove anti-environmental provisions contained in one or both bills.

Restore Funding for EPA's Office of Enforcement and Compliance Assurance

As you know, the House version of this bill reduces EPA's Office of Enforcement and Compliance Assurance (OECA) by the equivalent of 270 full-time positions. The Senate bill, however, maintains OECA at current staffing (FY 2001) levels, including for Superfund enforcement. We urge you to maintain the Senate funding level for this office to restore EPA's ability to effectively enforce our environmental laws to provide clean air, clean water, and clean land to the American public.

Congress has failed to provide EPA with the funding to fill personnel requirements to meet enforcement needs for several years. The General Accounting Office has recommended that Congress reject cuts to EPA's Office of Enforcement, most of which would come from EPA's

Dear Conferee
September 20, 2001
Page 2

regions. GAO stated that EPA lacks the workforce planning information needed to fully analyze the enforcement workload and the workforce capabilities of its regional offices. A recent report by EPA's own Inspector General found serious weaknesses in state enforcement of the Clean Water Act.

A strong federal environmental enforcement program is essential to addressing pollution problems that don't recognize state boundaries. Unlike individual states, EPA has the unique ability to bring enforcement actions against polluters that operate in multiple states. EPA's large, multi-state, industry-specific enforcement cases have deterred pollution and driven investment in clean technologies while preserving a level playing field for those competing in a nationally competitive marketplace. EPA has negotiated 15 such consent decrees so far this year.

Fully Fund EPA's Core Environmental Protection Programs

We greatly appreciate the House and Senate's efforts to reject the Administration's proposals to reduce funding for the Clean Water Act and Safe Drinking Water Act State Revolving Funds and other important programs to protect our air and water quality, provide safe food, and safely manage and clean up hazardous wastes. Specifically, during conference discussions, we urge you to maintain the following funding levels:

- the Senate's mark of \$1.35 billion to fully fund the Clean Water SRF;
- the House's mark of \$10 million for the beach water quality monitoring program;
- the Senate's mark of \$25 million for the National Estuary Program;
- the Senate's mark of \$192.5 million for Section 106 state water quality programs;
- the Senate's mark of \$233.5 million for Section 319 nonpoint source pollution programs;
- the House's mark of \$216.54 million for state and local air pollution programs; and
- the House's mark of \$79.2 million for the Leaking Underground Storage Tank Program to help states address threats from MTBE.

Protect the Public's Health from Arsenic in Drinking Water

Over 26 million people have dangerous levels of arsenic in their drinking water. Arsenic is known to cause cancer when ingested with drinking water. Arsenic is also linked to damage of the nervous, reproductive and immune systems. In 1996, Congress required EPA to finalize a rule for arsenic by January 1, 2001. On January 22, 2001, EPA issued an arsenic rule of 10 parts per billion that is based upon decades of scientific studies on arsenic's health effects, including six reports by the National Academy of Sciences, years of study on treatment costs and extensive hearings and public commenting. Unfortunately, this standard was recently suspended. We urge the conferees to adopt the House language that prohibits EPA from adopting a new rule that is less protective of health than the January rule.

The most recent National Academy of Sciences study demonstrates that even a standard of three parts per billion would be less protective than standards EPA has set for other drinking water

Dear Conferee
September 20, 2001
Page 3

contaminants. In light of EPA's announced commitment to setting a standard no weaker than the January 22 standard in response to the National Academy of Sciences September 2001 study, we believe that the House language should no longer give rise to any controversy and should be retained in conference.

Increase Funding for Federal Emergency Management Agency's Flood Map Modernization Project

We strongly support the House funding level for the Federal Emergency Management Agency's (FEMA) Flood Map Modernization Project. The House bill provides a total of \$72 million (\$22 million budget request, plus an additional \$50 million) to improve the floodplain maps in Fiscal Year 2002.

Many of the flood maps for the nation's thousands of floodprone areas are as much as 30 years out of date. Because the flood maps do not reflect today's development, they may contain inaccurate information about the floodplain, which leads to uninformed local decisions about new development, and ultimately could harm commercial and residential property owners, as well as taxpayers. FEMA's Flood Map Modernization Project is aimed at solving this problem by updating outdated floodplain maps and producing new maps for previously unmapped areas. The Cooperating Technical Partners program is an important element of the project through which FEMA collaborates with city, county, state and regional planning organizations to leverage funds to update the maps and ensure that they are in a format usable by local governments.

Major Anti-Environmental Riders of Concern

Although Congress has made notable progress this year to prevent anti-environmental riders, we are greatly troubled that certain legislative riders or report language that would further delay implementation of rules remain in either or both bills. These include:

Pesticide User Fees. Both the House and Senate bills include riders that interfere with the funding of a pesticide safety program at EPA that is critical to the implementation of the Food Quality Protection Act of 1996 (FQPA). Unfortunately, a rider in both bills prevents the collection of a user fee to assess the safety of pesticide residues on food (called tolerances), resulting in the serious underfunding of these activities and creating a shortfall in budget authority in this area of about \$29 million compared to the Administration's budget. In addition, the Senate bill allows the lapsing of an existing user fee, the reregistration maintenance fee, which the House fortunately extends for a year at \$20 million (in lieu of another less desirable registration fee).

We urge the conferees to drop the tolerance fee rider and use the funding to help meet FQPA deadlines to protect the food supply and the health of children. Furthermore, we urge the conferees to include the House provision extending the reregistration maintenance fee for a year

Dear Conferee
September 20, 2001
Page 4

at a level of at least \$20 million (in lieu of the registration fee). Also, we urge the conferees to add \$6 million to the program to promote reduced risk pesticides (+\$5 million) and to refine hazard and risk assessment data for evaluating risks to drinking water and workers (+1 million).

RCRA Mixture and Derived-from Rule. The House bill contains report language stating that the committee “expects” that EPA will amend the RCRA Mixture and Derived-from rules to allow certain kinds of hazardous wastes to exit from the regulatory system. This language was inserted despite EPA’s having issued a final rule on this matter in May 2001 that made only minor changes to the current system, and *after* having gone through a public notice-and-comment rulemaking procedure. The report language, which is based on recommendations of the chemical industry, calls on EPA to weaken the rule to allow the dilution or mixing of particular wastes so that such wastes no longer qualify as hazardous as a legal matter, even though no real treatment of the wastes has occurred and though toxic constituents continue to be present. Industry argues for weakening the Mixture and Derived-from rule on the ground that the EPA’s “Toxicity Characteristic” provides a “safety net” – even though the Toxicity Characteristic covers only 40 substances and has numerous other flaws. Indeed, in 1996 EPA released the “Hazardous Waste Characteristics Scoping Study,” which identified major gaps in hazardous waste protection, notably the failure of EPA to include additional toxic chemicals in scope of the Toxicity Characteristic.

EPA Region IX and Clean Water Act Oversight. Report language in the House bill concerning actions taken by Region IX regarding implementation of the Clean Water Act should be removed. The language appears to be an effort to support the Western States Petroleum Association in its lawsuit challenging more protective discharge permits issued to two refineries discharging dioxin, mercury, PCBs and other pollutants into already-impaired waters. Whether or not that is the Committee’s intent, the language is inappropriate in addition to being factually and legally inaccurate.

Over two decades ago, the Clean Water Act required that water- quality-based effluent limits be not only incorporated into discharge permits, but also actually met by the regulated community. Region IX’s modest efforts to belatedly move toward compliance with this clear and fundamental statutory mandate should be applauded and supported not chastised. We urge the conferees to delete this language from the final report.

Radon in Drinking Water Rule. Radon, a known carcinogen, is the second leading cause of lung cancer deaths in the nation. The National Academy of Sciences found that radon contributes to about 20,000 lung cancer deaths every year. In 1996, Congress required EPA to finalize regulations controlling radon in drinking water by November 2000. While EPA has proposed regulations, the agency has delayed issuing the final rule. Report language in the House bill that would require a GAO study before finalizing the rule could cause further delay, wasteful duplication of regulatory efforts, and weakened protections against radon in drinking water. We urge you to eliminate this language.

Dear Conferee
September 20, 2001
Page 5

Priority Setting and Cleaning-up Superfund Sites. Report language in the House bill directs EPA to clean up Superfund sites based on the quantity of sites in each state. We believe that the state in which the site is located should not be the primary determinant of how quickly a site is remediated. Rather, EPA should clean up sites based on their relative risks to human health and the environment.

Thank you for your attention to these concerns. We hope that the conference committee will agree to increase funding for enforcement and water quality programs and keep the final FY 2002 EPA appropriations bill free of anti-environmental riders. Again, we wish you well as you deal with many difficult legislative and policy choices over the next several weeks and months.

Sincerely,

Ted Morton
Director of Policy
American Oceans Campaign

S. Elizabeth Birnbaum
Director of Government Affairs
American Rivers

Sean Smith
Public Lands Director
Bluewater Network

Jacqueline Savitz
Executive Director
Coast Alliance

Mary Beth Beetham
Legislative Director
Defenders of Wildlife

Marty Hayden
Legislative Director
Earthjustice Legal Defense Fund

Elizabeth Thompson
Legislative Director
Environmental Defense

Ken Cook
President
Environmental Working Group

Sara Zdeb
Legislative Representative
Friends of the Earth

Lexi Shultz
Legislative Director
Mineral Policy Center

Lois J. Schiffer
Vice President for Public Policy
National Audubon Society

Kevin Collins
Acting Director, Government Affairs
National Parks and Conservation Association

Alyssondra Campaigne
Legislative Director
Natural Resources Defense Council

Debbie Sease
Legislative Director
Sierra Club

Dear Conferee
September 20, 2001
Page 6

Steve Moyer
Vice President for Conservation Programs
Trout Unlimited

Eli Weissman
Ocean Governance Program Manager
The Oceans Conservancy

Anna Aurilio
Legislative Director
U.S. Public Interest Research Group

cc: Senate and House members of the Conference Committee on VA-HUD-Independent
Agencies