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On Behalf of United Water**

Before the Senate Environment and Public Works

Subcommittee on Water and Wildlife

February 4, 2014 Hearing On

“Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Drinking Water Crisis”

Chairman Cardin, Ranking Member Boozman, and Members of the Subcommittee, thank you for the opportunity to discuss additional steps we can take to ensure the protection of our nation’s drinking water supplies.

I am currently employed by the law firm of Troutman Sanders, and until last week served as the Sr. Vice President for Environment Health and Safety at United Water for the last four years. Although I am testifying on behalf of United Water, I offer supporting statements by the National Association of Water Companies, of which United Water is a member, which are appended to my written testimony.

NAWC is an organization representing the regulated private water service industry. Its members are located throughout the nation and range in size from large companies like United Water that own, operate or partner with hundreds of systems in multiple states to individual utilities serving a few hundred customers. Through NAWC’s various business models, private water and wastewater professionals serve more than 73 million Americans, nearly a quarter of our country’s population.

As a former U.S. EPA water regulator and chief environmental compliance officer of a major water company, with the responsibility for overseeing the provision of safe and clean water to over 5 million people, I can assure you that this is an issue that United Water and every other drinking water provider in this nation cares very much about. Let me emphasize from the outset that this issue is not about public versus private water systems, it’s about the security, safety and wellbeing of all Americans.

As James Salzman, Professor of Duke Law and the Nicholas Institute, and author of a new book on drinking water, has recently noted, since before Roman times, water providers have sought to protect against three broad classes of threats: natural contaminants and pathogens, malevolent attacks, and accidents. And as Dr. Salzman’s scholarship bears out, never before in human history has the quality of our drinking water been more secure and safe. Notwithstanding the progress made to date, I am here to offer additional thoughts on how we can better prepare for and respond to these ever present threats, but particularly threats from chemical contaminants.

Earlier this month, the water supply for over 300,000 in Charleston, West Virginia, was significantly impacted by an upstream chemical spill. Events like this serve as a stark reminder of the importance of safe, clean, and reliable sources of water to our families, communities, businesses and local economies. The purpose of this hearing is to understand what went wrong in that situation and what we can do as a nation to ensure that our drinking water supplies remain secure, safe, and clean. We appreciate the opportunity to offer our thoughts on this important matter.

First, and foremost, this is a matter of spill prevention and protecting source waters. There are tens of thousands of chemicals currently used in commerce, each of which has the potential to impact a drinking water source for someone or some community, somewhere. The best thing we can do - and where the greatest focus ought to be placed - is keeping harmful chemical contaminants out of the water altogether. It's abundantly clear that we would not be here today had the storage facility at the heart of this spill provided adequate secondary containment, which would have prevented the chemical from reaching the Elk River. In light of this catastrophic release, many have called for more robust inspections and controls at bulk chemical storage and manufacturing facilities, particularly those located close to waters that serve as drinking water sources. United Water supports these calls for additional EPA and state efforts, for example, to enhance inspection, spill containment, leak detection, and training requirements for personnel managing the activities of chemical storage facilities.

The passage of new regulations, in 1988, bolstering the Clean Water Act's Spill Prevention, Control and Countermeasures (SPCC) program, in response to the Ashland oil spill on the Monongahela, which impacted over one million people, resulted in dramatic reductions of major oil spills. The obvious thrust of the SPCC program is to prevent harmful oil spills as opposed to reactive after-the-fact measures to respond to and cleanup such spills. As the old adage goes, "an ounce of prevention is worth a pound of cure." Some states, like New Jersey, under state law, have extended the core principles and requirements of the SPCC program to all hazardous chemicals, helping to improve spill prevention, control and countermeasures across the spectrum of possible chemical contaminants.

Second, water systems need better and more specific data to identify and prepare for upstream risks. Public water systems currently use various tools to identify and prepare for risks, including source water assessments, vulnerability assessments, and emergency response plans. And water systems work closely with state and EPA regulators, and industry associations, like the American Water Works Association,¹ who provide tools and training for water operators on how to identify, prepare for and respond to water emergencies. Most of these tools, however, assess general, broad categories of risks, whether physical, biological or chemical in nature.

¹ See, for example, ANSI/AWWA standard G300, Source Water Protection, and ANSI/AWWA standard J100 – Water Treatment Plant Operation and Management.

Rarely, if ever, are public water systems provided or privy to specific data about the chemicals upstream that, if released, could affect the water system. This needs to change.

Some have also suggested that public water systems should monitor for more chemicals. While water systems routinely monitor for a host of contaminants under the Safe Drinking Water Act, these systems simply cannot monitor for the thousands of chemicals that could potentially impact water supplies. Nor should they be expected to serve as watershed police. Rather, water systems can only reasonably be expected to monitor those chemicals for which they know of or reasonably expect may impact source waters and enter their distribution system.

The federal Emergency Planning and Community Right-to-Know Act (EPCRA) currently requires facilities that store hazardous substances in excess of threshold planning quantities to provide data annually to state and local emergency response personnel. But there is no requirement that such data be provided to nearby water systems. Similarly, EPCRA, the Clean Water Act, and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), require any facility that experiences a release in excess of established reportable quantities to immediately notify the National Response Center and state and local emergency response personnel. Yet, again, there is no requirement that downstream water suppliers be notified of these releases or spill. This leads me to my third point.

Prompt notification of a spill that threatens a water supply is critical. Advance warning and timely notification are critical in any kind of emergency response. Receiving timely notification about a spill can help make a bad situation less bad, and help mitigate the most significant risks to the public. But while requiring early warning and timely notification may improve emergency response, it will not entirely eliminate the risks.

Surface water systems, in particular, are often at the mercy of those located upstream from their water intake structures. Without prompt notification of a spill, a water provider may have no way to detect and respond to the presence of a contaminant until after it has already entered the distribution system. At which point, the only effective emergency response is immediate public notification in the form of a “boil water” or “do not drink” notice. But as we saw in the case of the West Virginia spill, very little was known about the human health risks of the chemical that was spilled. For these systems, having two hours, one hour, or even a half-hour to prepare for a slug of chemicals that will reach its water intake, can make a meaningful difference in responding to a chemical release.

The ability for water systems to rapidly respond to and mitigate the impacts of a spill is influenced by many factors, including:

- The proximity of the spill to the intake structure, in the case of surface water, and the protective zone, in the case of groundwater;
- The volume of the spill relative to the volume of source water;
- The toxic profile of the chemical;
- Whether a system is solely reliant upon a single source;
- The availability of alternative water sources, including interconnections; and
- Drinking water storage capacity.

Simply closing a water intake structure, and waiting until a threat has passed by, is not practicable, in all cases, and such decisions must be balanced with other needs and threats to the community, such as fire suppression. These can be difficult decisions to make, often made with imperfect data and information in the midst of an emergency situation.

I would also mention that some communities, such as Philadelphia, and interstate compact commissions, such as the Ohio River Valley Water Sanitation and Delaware River Basin Commissions, have deployed watershed early warning systems that monitor, detect and notify communities of impending threats.² While these early warning systems are by no means perfect, they do present another option and layer of defense for protecting our public water supplies from accidental spills.

Lastly, we offer a cautionary note.

While water systems welcome the additional support in preparing for and responding to chemical threats, expectations of what can be accomplished with more data must be tempered. It will do no good to simply dump reams of paper and data on public water systems and expect that that information alone will solve this problem. Many systems are already resource constrained and struggle to meet the demands of everyday operations. Moreover, rigorously assessing the risks of chemical contaminants from multiple sources can be a tedious and complex process, requiring significant resources and expertise, which many systems simply do not possess.

The most effective solutions will necessarily involve greater public education, collaboration and communication with EPA, states, and all stakeholders within the watershed about the importance of source water protection. This brings me full circle to my opening remarks about the singular importance of prevention.

² See Delaware Valley Early Warning System: <http://www.state.nj.us/drbc/quality/alert/index.html>; See also this description of the ORSANCO early warning system: http://www.epa.gov/OEM/docs/oil/fss/fss04/schulte_04.pdf.

In closing, as the Members of this Subcommittee contemplate solutions to increase the safety of our water supplies, water systems encourage several areas of attention:

1. Preventing spills and protecting source water;
2. Providing water systems specific data regarding chemicals and chemical storage that pose the greatest and most immediate risks to water supplies; and
3. Ensuring prompt notification of any spill that threatens water supplies and public health.

Once, again, thank you for this opportunity.

NAWC Supporting Principles

Examination of the Safety and Security of Drinking Water Supplies Following the Central West Virginia Chemical Spill

The National Association of Water Companies (NAWC) and its member companies are committed to advancing effective security and safety measures. Our highest priority is to provide safe, clean drinking water to the public. Private water utilities and contract operators in the U.S. have a demonstrated record of compliance with regulatory requirements and of prudent preparation and planning for vulnerabilities and water emergencies. Water utilities, whether private or municipal, deal with an ever-changing risk landscape. By constantly evaluating threats and vulnerabilities and also identifying and characterizing biological and chemical agents that can enter their distribution systems, they must ensure they respond and recover in a safe and effective manner from acts of physical or biological threats, natural disasters, cyber incidents or any other event—foreseen or unforeseen.

NAWC and its member companies make the following recommendations:

- 1. Ensure more effective and streamlined security communication among U.S. EPA, states and water utilities regarding releases of hazardous substances.**
 - a. Currently, several statutes, such as the CWA, EPCRA, and CERCLA collectively require both annual inventory reporting and emergency spill reporting to federal and state authorities, without any requirement that utilities be similarly notified.
 - b. To effectively assess vulnerabilities and respond to threats, water utilities must also be provided this critical information, including receiving prompt notification in the event of a release or spill.
- 2. Ensure higher level of disclosure of potential upstream risk to utilities, as well as warning protocols.**
 - a. Potential sources of contamination must be disclosed to utilities, just as they are required to be disclosed to local emergency responders. Chemical facilities should disclose which chemicals are stored upstream. There are thousands of potential contaminants, but limited resources force water utilities to focus their resources on monitoring for those that pose a known risk to public health, or are reasonably expected to be present in source water.
 - b. Simply knowing that a potential contaminant is stored upstream is insufficient. The technology does not exist that would set off an alarm when a specific contaminant approaches a utility's intakes. Protocols are needed for warning

water utilities in a timely manner when a spill upstream occurs, what the contaminant is and what remediation is recommended.

3. Ensure government agencies at all levels more effectively protect watersheds that provide sources of drinking water.

- a. Water utilities are proactive and collaborate with federal, state, and local governments to maintain effective regulatory oversight of clean, safe drinking water.
- b. To ensure that water systems can be in the best possible position to safeguard and minimize impacts on water supplies, water utilities support more efficient information sharing and have specific ideas about how to improve information sharing.
- c. New regulatory regimes should be measured and not create new legal burdens on drinking water providers, and should not put them in the role of regulator or enforcer.