April 18, 2012

The Honorable John Shimkus  
Chairman, Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Gene Green  
Ranking Member, Subcommittee on Environment and the Economy  
U.S. House of Representatives  
Washington, D.C. 20515

RE: MTBE Liability Waiver in the “Domestic Fuels Protection Act”

Dear Chairman Shimkus and Ranking Member Green,

As the Environment and the Economy Subcommittee convenes a hearing on H.R. 4345, the “Domestic Fuels Protection Act,” the drinking water community would like to register our concern about Section 4 of the bill, which would allow polluters to pass on to communities and their customers the cost of cleaning up drinking water sources contaminated by MTBE (methel tertiary-butyl ether). This issue of “safe harbor” for contamination by MTBE came up during the 109th Congress, and the House and Senate ultimately did not include such provisions in the comprehensive energy bill enacted in 2005. We hope that Congress will reach the same conclusion on a potential MTBE liability waiver this year as well.

To recap some the issues discussed in 2005:

- MTBE travels faster through the ground than other constituents of gasoline and does not biodegrade easily;
- Humans can taste the presence of MTBE in water containing as little as 2 parts per billion;
- There is no requirement that MTBE be used as an oxygenate for gasoline; and
- Studies have concluded that MTBE is an animal carcinogen with the potential to cause cancer in humans.

Many communities are already straining under the cost of billions of dollars in water infrastructure repair and replacement needs, and past studies have estimated that it could cost more than $30 billion to remove MTBE from contaminated water sources across the country. Local water utility ratepayers simply cannot afford to foot the entire bill to remove MTBE pollution from their drinking water sources, nor should they.

As introduced in the House of Representatives, Section 4 of H.R. 4345 would provide product defect liability immunity (“safe harbor”) to producers of a wide range of gas additives, including MTBE. If enacted, ongoing lawsuits by drinking water systems...
against MTBE producers would be dismissed, and those producers would have little incentive to prevent, much less clean up, MTBE contamination resulting from their activities. Affected water systems would not only have to finance billions in cleanup costs, but also find and pay for new sources of drinkable water – all without assistance from the party responsible for the pollution in the first place. In many cases, the result would be increased water rates to offset these costs, or deferred rehabilitation and replacement of aging water infrastructure.

With these concerns in mind, we encourage you to amend H.R. 4345 to ensure that no local community or drinking water system will be left without the ability to recover costs associated with remediating MTBE or other similar contamination of drinking water sources.

Our association members, in partnership with the U.S. Environmental Protection Agency and Congress, have a unique responsibility in ensuring that Americans receive the safest drinking water possible. Granting safe harbor to MTBE or other, similar contamination would be incompatible with that duty. Thank you for considering our perspectives, and we look forward to working with you on this critically important issue.

Sincerely,

American Water Works Association
Association of California Water Agencies
Association of Metropolitan Water Agencies
National Rural Water Association

cc: Environment and the Economy Subcommittee members