



U.S. House of Representatives
Committee on Transportation and Infrastructure
Washington, DC 20515

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Chairman

Nick J. Rahall, III
Ranking Member

July 20, 2012

James W. Coon II, Chief of Staff

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MEMORANDUM

TO: Members of the Subcommittee on Water Resources and Environment

FROM: Bob Gibbs
Subcommittee Chairman

RE: Hearing on "Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality"

PURPOSE OF HEARING

The Water Resources and Environment Subcommittee is scheduled to meet on Wednesday, July 25, 2012, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building, to receive testimony from city mayors, the commissioner of a city's department of environmental protection, a county commissioner, a former executive director of a river valley water sanitation commission, a state water quality program director, and the U.S. Environmental Protection Agency (EPA) on EPA's recently finalized integrated planning and permitting regulatory prioritization effort under the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act).

This hearing follows up on a Water Resources and Environment Subcommittee hearing held on December 14, 2011, on the proposed integrated planning and permitting regulatory prioritization effort that EPA proposed late last year.

BACKGROUND

The Water Resources and Environment Subcommittee has jurisdiction, under the Clean Water Act (CWA), over water quality and wastewater infrastructure programs administered by EPA. Title III of the CWA places a number of treatment and other regulatory requirements on municipalities' wastewater treatment works, and Title IV of the CWA requires permits, under the National Pollutant Discharge Elimination System (NPDES) permit program, for the discharge of pollutants from wastewater treatment works and certain municipal storm sewer systems. Title VI of the Clean Water Act provides for the establishment and capitalization of Clean Water State

Revolving Loan Funds (SRFs) to aid in funding the construction of wastewater treatment works and other wastewater infrastructure around our nation.

It is widely accepted that clean drinking water and public wastewater services are necessary priorities to sustain public health, support our economy, and protect the environment. Significant amounts of public resources have been devoted to water infrastructure in American communities over the last 40 years to meet these priorities. An impressive inventory of physical assets has been developed over this period.

Our nation's wastewater infrastructure includes 16,000 publicly owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers, and 200,000 miles of storm sewers. Since 1972, with the enactment of the Clean Water Act, Federal, State, and local investment in our national wastewater infrastructure has been over \$250 billion. This investment has provided significant environmental, public health, and economic benefits to the nation. Our farmers, fishermen, manufacturers, and tourism industries rely on clean water to carry out activities that contribute well over \$300 billion to our economy each year.

However, our nation's ability to provide clean water is being challenged, as our existing national wastewater infrastructure is aging, deteriorating, and in need of repair, replacement, and upgrading. Old and deteriorated infrastructure often leak, have blockages, and fail to adequately treat pollutants in wastewater, thereby creating water pollution problems.

Regulatory Pressures and Inadequate Infrastructure Issues Facing Our Communities

The needs of municipalities to address wastewater infrastructure are substantial. According to studies by EPA, the Congressional Budget Office, and the Water Infrastructure Network, the cost of addressing our nation's clean water infrastructure needs over the next 20 years could exceed \$400 billion, roughly twice the current level of investment by all levels of government.

The needs are especially urgent for many areas trying to remedy the problem of combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), often associated with wet weather conditions, and for communities lacking sufficient independent financing ability. In recent years, EPA (and activist groups, through citizens suits) has stepped up enforcement actions against many municipalities in an effort to force them to eliminate their CSOs and SSOs. EPA's National Enforcement Initiative for fiscal year 2011 focuses on the reduction of these overflows by winning commitments from municipalities to implement infrastructure upgrades to prevent these problems in the future.

These enforcement actions have resulted in many larger cities and smaller municipalities entering into enforcement settlements, by signing consent agreements with EPA (and/or activist groups) to implement enforceable plans to eliminate their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

The projected total cost to larger municipalities of implementing the terms of each of these settlements could end up being as much as \$1-5 billion per city, or even more in some instances. There are approximately 746 communities, located in 31 States and the District of Columbia, with combined sewer systems and CSO issues potentially facing these sorts of costs.

Many more communities have SSO issues. EPA estimates that there are at least 23-75 thousand SSOs per year (not including sewage backups into buildings), amounting to an estimated three to ten billion gallons a year of untreated releases.

In recent years, other regulatory issues also have become national priorities, which are placing a further demand for resources on municipalities' utilities. For example, while our nation's wastewater utilities already have removed the vast majority of conventional pollutants from municipal wastewater, looking forward, they face significantly higher costs to remove the next increment of pollutants plus to control pollutants from urban stormwater runoff.

EPA has initiated a national rulemaking to establish a potentially far-reaching program to regulate stormwater discharges from newly developed and redeveloped sites and add to or make other regulatory requirements more stringent under its stormwater program. This includes possibly expanding the scope of the municipal separate storm sewer systems (MS4) regulatory program, establishing and implementing a municipal program to regulate stormwater discharges from existing development, imposing specific requirements for transportation facilities, and establishing and implementing stormwater regulations specific to the Chesapeake Bay watershed. This stormwater rulemaking, if promulgated, could cost our communities additional billions of dollars in regulatory compliance costs, thereby imposing substantial additional regulatory and economic burdens on municipalities to comply. EPA recently has delayed proposal of the rule to June 2013 and finalizing the rule until December 2014 as a result of the strong opposition to, and the anticipated extremely high cost of, the rule.

In addition, EPA has begun zealously pressing the States and local governments to adopt a new "framework" for managing nutrients pollution, including crafting numerical nutrients criteria, setting strict numerical regulatory requirements, including numerical standards and TMDL load reduction goals for pollutant sources, and adopting stringent numerical nutrient standards and stringent effluent limits for nutrients in NPDES permits for municipal and other dischargers of nutrients. Stringent effluent limits for nutrients in NPDES permits could mean that many municipalities would have to install and operate, at great expense, nutrient treatment and removal technologies at their wastewater treatment plants. These requirements will add still an additional layer of regulatory requirements and economic burdens that our communities will have to deal with.

Further, many communities face increasing regulatory requirements and more stringent standards under the Safe Drinking Water Act for their public drinking water systems. In addition, protection of critical wastewater infrastructure has become important to homeland security. Many of these same communities also have to deal with State-imposed regulatory requirements, on top of the Federal mandates.

A large portion of these Federal and State regulatory mandates are going unfunded by the Federal and State governments. Rather, local governments are being expected to pay for more and more of the costs of these mandates, with the result that local government has made substantial increases in investments in public water and wastewater infrastructure in recent years and local communities and ratepayers are increasingly getting economically tapped out. For example, late in 2011, Jefferson County, Alabama (Alabama's most-populous county and the home of Birmingham) declared the largest municipal bankruptcy in U.S. history, in part as a

result of a multi-billion dollar sewer project. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, grants, bonds, and user fees.

Communities' Concerns

As a result of many communities becoming financially squeezed, representatives of local government are increasingly voicing concerns over EPA's policies and unfunded mandates, including the cumulative impacts of multiple regulatory requirements being imposed on them, and over how EPA is dealing with communities to address the regulatory mandates that EPA is imposing on them. Some of the concerns include:

- CSO/SSO enforcement actions appear to be overly costly, overly prescriptive, and beyond the financial capability of local government to implement. The local experience in EPA's stormwater management compliance and enforcement efforts, including consent order negotiations, has resulted in extremely expensive requirements to eliminate stormwater overflows from combined sewers and sanitary sewers. These Federal unfunded mandates come at a time when local budgets are hard pressed to afford them.
- EPA does not apply a consistent approach in addressing CSO issues around the nation. The Federal government is inconsistent in how it enforces CSO compliance protocols throughout the nation and often ignores specific local conditions, such as affordability factors and existing plans for cleaner water. The result is less than optimal engineering solutions for cities, taxpayers, and the environment.
- The complexities and expense of negotiating solutions to wet weather overflows from combined sanitary/storm sewer systems that are acceptable to EPA and the Department of Justice are overwhelming to municipalities.
- Local communities have no sense of partnership with the agency, in that municipalities are often treated as criminals, and that these attitudes permeate the decision-making process. EPA is inflexible with communities in seeking resolution of CSO and other water quality problems. This inflexible approach halts progress in addressing many water quality issues.
- Many of the Federal (and State) regulatory mandates imposed on communities reflect a "one size fits all" approach that does not account for an individual municipality's specific public health and other needs, and requires the completion of massive capital investments on tight construction schedules. Because these projects are legally mandated and have to be done within a specified time period, many of our communities' construction dollars are not being dedicated to the projects that are most needed by the communities, or are not the most cost-effective in terms of public health and environmental protection. It is time for the national clean water strategy to evolve from a "one size fits all" mandate and enforcement approach, to a strategy that recognizes and funds the individual needs of water and wastewater utilities based on demonstrated public health needs and water quality benefits.

- Each EPA regulatory program is managed in a “stovepipe,” with each program imposing its own requirements on communities without regard to what any of the other programs are doing.
- EPA exhibits an attitude with respect to their regulatory requirements that everything is a priority, so therefore, nothing is a priority.

Need for Greater Regulatory Flexibility and Prioritization

Municipalities are very concerned about the impacts the unfunded Federal mandates treadmill has on local government ability to meet compliance obligations, and have been urging EPA officials to limit the massive costs of complying with agency wastewater and stormwater requirements, especially given municipalities’ dwindling revenues due to the economic downturn. Representatives of local government have approached EPA (and representatives of the States) to press them for greater regulatory program/policy flexibility and prioritization to allow municipalities to achieve the goals of the various water regulatory program requirements in a less costly manner and over a slightly longer time frame.

For example, integrating stormwater and wastewater requirements could help address municipalities’ cost concerns because EPA would be better able to weigh municipalities’ financial capabilities to address both sets of requirements, and to trade off investments in wastewater and stormwater management. EPA then could prioritize and support those activities that provide the highest environmental return per dollar spent.

Municipalities want to holistically address the regulatory mandates facing them, and have the flexibility to eliminate inconsistent and duplicative requirements, better plan out and prioritize projects that will provide the greatest water quality benefits the soonest, seek out the most cost-effective approaches, undertake locally designed strategies that reflect local and regional variations in climate, economic stability, population, and other considerations, explore the use of green infrastructure and other flexible and innovative solutions where appropriate, and be able to focus more resources on maintaining their current infrastructure in a state of good repair.

Municipalities also want to employ an adaptive approach that would allow enforceable requirements to be modified to show new modeling or other predictive calculations, or other changed circumstances, including efficacy of treatment and management techniques previously implemented by the community, other watershed protection that has been implemented, water conservation, population changes, and changes in economic circumstances.

Further, they want EPA to reconsider the Agency’s “affordability criteria” for determining how much an individual household or community can pay for water services and regulatory mandates before they become unaffordable. With local government providing the majority of the capital required to finance water infrastructure investments, the rate payers are picking up an increasingly larger part of the debt service or carrying charges through their user fees. Many communities have experienced dramatic increases in user fees in recent years to support these infrastructure investments, and an increasing number of communities are reaching their limits of economic affordability.

Importantly, municipalities are seeking a more collaborative approach where EPA and State water regulators work more like “partners” than “prosecutors” with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues through the use of best engineering and innovative approaches at the lowest cost, resulting in the greatest environmental benefits.

EPA’s Proposed Integrated Planning and Permitting Initiative

It appears that EPA may be starting to listen to municipalities’ concerns. Late in the summer of 2011, EPA announced (as part of an Agency regulatory review plan) that it was going to develop a new policy to allow municipalities to prioritize their water quality requirements, to address the huge unfunded costs associated with the growing number of requirements stemming from EPA water rules and enforcement actions. This is the sort of approach that many municipalities have been seeking to have EPA adopt.

EPA said it intends to develop a policy to create a new integrated planning and permitting approach for dealing with stormwater flows and CSOs to allow municipalities and utilities to develop plans for prioritizing wet weather investments. According to the review plan, EPA intends to consider approaches that allow municipalities to evaluate all of their CWA requirements and develop comprehensive plans to meet these requirements.

On October 27, 2011, EPA’s water and enforcement offices followed up with an Agency memorandum, issued jointly by the Assistant Administrators for Water and for Enforcement and Compliance Assurance, to regional permit writers outlining the broad components of an upcoming “framework” the Agency plans to develop to assist EPA regional officials and state and local governments in prioritizing CWA regulatory requirements when funds for infrastructure improvements are limited. The memo acknowledged that the current approach of focusing on each CWA requirement individually can have the “unintended consequence of constraining a municipality from implementing the most cost-effective solutions in a sequence that addresses the most serious water quality issues first.”

In its memo, EPA said that a comprehensive and integrated planning approach to a municipality’s wastewater and stormwater obligations offers the greatest opportunity for implementing the most important projects first, noting that the CWA provides the agency the necessary flexibility to utilize this approach. The flexibility includes evaluating a municipality’s financial capability in tough economic times and setting appropriate compliance schedules, allowing for implementation of innovative solutions, and sequencing critical wastewater and stormwater projects in a way that ensures human health and environmental protection. The memo said that the integrated planning approach framework that EPA is developing is supposed to identify the essential components of an integrated plan, steps for identifying municipalities that might make best use of such an approach, and how best to implement the plans under CWA permit and enforcement programs.

Once the framework was in draft form, EPA also has mentioned about identifying municipalities that are developing or have developed integrated plans that can serve as models for this work. The memo also advocates for the increased use of so-called green infrastructure as a way to meet regulatory requirements.

On Friday, January 13, 2012, EPA formally released a proposed framework, entitled *Draft Integrated Planning Approach Framework*, to provide EPA, States, and local governments with guidance in developing and implementing effective integrated planning approaches to municipal wastewater and stormwater management. The proposed framework identified EPA's vision of operating principles and essential elements of an integrated municipal wastewater and stormwater management plan.

The Agency then sought stakeholder input in the development of the framework and scheduled a series of public workshops across the country during January and February 2012, where the Agency obtained feedback from States, local governments, utilities, and environmental groups. The Agency also accepted written comments on the use of such integrated plans via a public docket through the end of February 2012.

In the public workshops and in written public comments submitted to EPA, the Agency heard concerns, among other things, about the continued central role of enforcement mechanisms in the integrated planning process, rather than through the use of permits; that the kind of self-reporting of CWA noncompliance contemplated in the EPA draft framework could lead to penalties or other enforcement actions and that the framework does not provide a "safe harbor approach" to compliance as part of the integrated planning initiative; that EPA will not give enough consideration to strained municipal budgets in its discussions with cities, especially in setting compliance timelines in consent decrees; and a lack of written commitment on the part of EPA and the U.S. Department of Justice to update and modify existing judicial and administrative consent decrees more frequently in the future so that their terms do not delay or hinder "regulatory flexibility" from truly taking effect.

Stakeholders urged EPA to, among other things, be proactive in collaboratively assisting communities across the nation, as pilot demonstration communities, to develop integrated plans that will show how EPA, State regulatory agencies, and local communities can all work together to implement flexible, practical, and affordable wet weather solutions in a more integrated, cost-effective, and flexible manner, and also pass muster with the regulators; to create a new EPA national integrated wet weather compliance permit that supersedes any and all local water quality permits for a set trial period and that includes all mandates and/or requirements under the CWA; and to base monetary investment into an integrated wet weather improvement plan and permit on a pilot community's "capability to pay."

EPA's Final Integrated Planning and Permitting Initiative

On June 5, 2012, EPA released the issuance of their final framework, entitled *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*. (The final framework document is dated May 2012 and the framework's cover memo is dated June 5, 2012; [see copy of memo and framework, attached.](#)) The seven-page document outlines principles for letting communities structure plans for addressing multiple CWA obligations one at a time in an effort to reduce costs. The final integrated planning framework is similar to the draft.

EPA's framework is intended to provide EPA regional offices and States with a guide on how to help cities prioritize costly wastewater and stormwater infrastructure improvements that

are needed to address water quality issues, including preventing CSOs, SSOs, and other pollution releases during heavy precipitation events.

The final policy was initially received by some stakeholders with cautious optimism and hope that the framework will be a step forward in dealing with mounting financial obligations facing cities under the CWA. But many said that it is too early to tell how EPA's integrated planning process will play out. Many noted that how EPA implements the policy will be critical to evaluating its success, since the devil is in the details, and there is not a lot of detail in the final policy. What the policy means is only going to become clear as EPA begins to apply it in particular places, given that municipalities so far have not had an opportunity to modify their permits or consent agreements to take advantage of the policy.

Some stakeholders have also had some more specific initial reactions. For example, some note that EPA's policy to help communities integrate their wastewater and stormwater infrastructure plans falls short of long-standing calls from many stakeholders to limit the use of enforcement mechanisms when implementing new infrastructure requirements, and to set a clearer threshold for determining municipalities' financial capabilities to pay for all of the unfunded mandates.

But EPA largely rejected their calls, indicating in the document that the Agency will rely on both permits and enforcement actions to implement the new integrated approach. Also, the Agency says plans developed using the framework cannot be the basis for delaying either permits or enforcement actions. (It should be noted that, even before EPA issued the final policy, the Agency was continuing to emphasize its use of enforcement actions, by announcing a series of new and revised wet weather enforcement actions against a number of cities, thereby suggesting the Agency intends to continue to bring enforcement actions even after it issued the final framework.)

In addition, while EPA appears to have expanded the number of qualitative factors it will consider when assessing municipalities' capability to finance infrastructure upgrades, it did not listen to calls from municipal officials and others for EPA to set a definitive affordability threshold (of 2 percent of a community's median household income) as the maximum amount that all infrastructure upgrades can cost.

Rather, the policy includes more general language saying that a financial capability plan should be conducted and included as a reference point in the plan, and that such an assessment "should take into consideration current sewer rates, stormwater fees, and other revenue, planned rate or fee increases, and the costs, schedules, anticipated financial impacts to the community of other planned stormwater or wastewater expenditures, and other relevant factors impacting the utility's rate base."

Many stakeholders remain concerned that EPA is not planning to identify pilot project communities to demonstrate how this framework can be successfully applied. While EPA has expressed some interest in identifying case studies where municipalities have been successful at implementing an integrated approach, EPA is continuing to sit back and resist the idea of being proactive and collaboratively working with communities in implementing pilot demonstration projects.

States are concerned that EPA has not clarified the role that State permitting agencies will play in helping municipalities craft acceptable integrated plans for managing wastewater and stormwater runoff. States and others also are concerned that EPA has not spelled out the Agency's own oversight role in the integrated planning process in the framework. For instance, the framework does not explain what EPA's oversight role would be if a State and a municipality agree on an integrated plan, and what would happen if EPA second guesses that plan. EPA emphasized in the framework that it is the responsibility of municipalities to work and coordinate with State permitting agencies, which are mostly responsible for issuing NPDES discharge permits, and with EPA regional offices.

Many stakeholders are pleased that the final policy includes new language endorsing the use of adaptive management practices to ease communities' ability to comply with permit and enforcement requirements. Many believe the inclusion of adaptive management language is encouraging, because it means that there is some acknowledgment by EPA that circumstances do sometimes change in such a way that a project that maybe was sensible at the time an agreement was struck may not make sense later, either because of financial constraints or because some new technology may serve the same purpose more effectively at a lower cost.

Many also are pleased that the framework more fully fleshes out the role of "green" infrastructure, and solidifies its role as a potential option for meeting pollution reduction requirements under the CWA at a lower cost than more traditional "gray" infrastructure, such as deep storage tunnels. (Green infrastructure, in some instances, may help reduce project costs by reducing the amount of runoff that needs to be controlled or treated with expensive, traditional "gray" infrastructure.)

In short, it remains to be seen how EPA's finalized integrated planning and permitting regulatory prioritization initiative will turn out. As already noted, some municipal officials are concerned that EPA is not willing to limit its enforcement efforts against municipalities, which have been driving costly infrastructure upgrades to reduce stormwater and sewer overflows during heavy storm events. They are concerned that a continued emphasis on an enforcement approach will undermine the flexibility EPA is ostensibly seeking to provide.

At Wednesday's hearing, the Subcommittee on Water Resources & Environment will hear from EPA's water and enforcement office heads who issued the final integrated planning and permitting framework, as well as from representatives of local and State government, to get their latest views on EPA's final framework. The complete list of witnesses for the hearing follows on the next page, below.

WITNESSES

Panel One

Mayor David J. Berger
City of Lima, Ohio
Testifying on behalf of the US Conference of Mayors

Mayor Ralph Becker
City of Salt Lake City, Utah
Testifying on behalf of the National League of Cities

Mr. Todd Portune
Commissioner, Hamilton County, Ohio Board of Commissioners

Mr. Walt Baker
Director, Division of Water Quality, Utah Dept. of Environmental Quality
Testifying on behalf of the Association of Clean Water Administrators

Mr. Carter H. Strickland, Jr.
Commissioner, New York City Dept. of Environmental Protection

Mr. George Hawkins
General Manager, District of Columbia Water and Sewer Authority
Testifying on behalf of the National Association of Clean Water Agencies

Mr. Alan Vicory, Jr.
Principal, Stantec Consulting
(Formerly Executive Director, Ohio River Valley Water Sanitation Commission)
Testifying on behalf of the Water environment Federation

Panel Two

Ms. Nancy Stoner
Acting Assistant Administrator for Water, US EPA

Ms. Cynthia Giles
Assistant Administrator for the Office of Enforcement and Compliance Assurance, US EPA

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> Attachment: EPA Final *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*

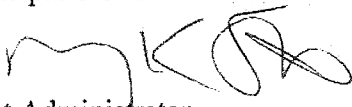



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN - 5 2012

MEMORANDUM

SUBJECT: Integrated Municipal Stormwater and Wastewater Planning Approach Framework

FROM: Nancy Stoner 
Acting Assistant Administrator
Office of Water

Cynthia Giles 
Assistant Administrator
Office of Enforcement and Compliance Assurance

TO: EPA Regional Administrators
Regional Permit and Enforcement Division Directors

In recent years, EPA has increasingly embraced integrated planning approaches to municipal wastewater and stormwater management. EPA further committed to work with states and communities to implement and utilize these approaches in its October 27, 2011 memorandum "*Achieving Water Quality Through Municipal Stormwater and Wastewater Plans.*" Integrated planning will assist municipalities on their critical paths to achieving the human health and water quality objectives of the Clean Water Act by identifying efficiencies in implementing requirements that arise from distinct wastewater and stormwater programs, including how to best prioritize capital investments. Integrated planning can also facilitate the use of sustainable and comprehensive solutions, including green infrastructure, that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes that enhance the vitality of communities.

To provide further guidance on developing and implementing effective integrated plans under this approach, we have developed, with extensive public input, the attached Integrated Municipal Stormwater and Wastewater Planning Approach Framework document. We are posting the framework document on our website and, as they become available, will provide practical examples of how municipalities are implementing this approach. We would like to thank Regions 2, 4, 5, 7 and 10 for their assistance in conducting public workshops to gain input on the draft framework. We encourage all Regions to work with their States to identify

appropriate opportunities for implementing the Integrated Planning approach. We will continue to work with the Regions as we explore the pathway forward on implementing this approach.

We encourage you to contact Deborah Nagle, Director, Water Permits Division (nagle.deborah@epa.gov) and Mark Pollins, Director, Water Enforcement Division (pollins.mark@epa.gov) with any questions you might have.

Attachment

cc: Regional Permit and Enforcement Liaisons
Association of Clean Water Administrators
United States Conference of Mayors
National League of Cities
American Rivers
National Association of Clean Water Agencies
National Association of Flood & Stormwater Management Agencies
Natural Resources Defense Council
Water Environment Federation
Environmental Council of States

INTEGRATED MUNICIPAL STORMWATER AND WASTEWATER PLANNING APPROACH FRAMEWORK

May, 2012

The purpose of this framework is to provide further guidance for EPA, States and local governments in developing and implementing effective integrated plans under the Clean Water Act (CWA). The framework identifies the operating principles and essential elements of an integrated plan. The integrated planning approach is voluntary. The responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach. If a municipality decides to take advantage of this approach, the integrated plan that it develops can provide information to inform the permit and enforcement processes and can support the development of conditions and requirements in permits and enforcement orders. The integrated plan should identify the municipality's relative priorities for projects and include a description of how the proposed priorities reflect the relative importance of adverse impacts on human health and water quality and the municipality's financial capability. The integrated plan will be the starting point for development of appropriate implementation actions, which may include requirements and schedules in enforceable documents.

EPA will continue to provide opportunities for stakeholder input during the implementation of this framework. Outreach activities associated with this effort will include the development of case studies and best practices.

EPA recognizes that approved National Pollutant Discharge Elimination System (NPDES) States are partners in the implementation of the program and have the lead for the day-to-day activities in their States. Many States have existing water quality management planning processes, which may include those established under Section 208 and 303 of the CWA, that may help facilitate the development of an integrated plan and work in conjunction with the implementation of an integrated plan. Integrated plans should be consistent with, and designed to meet the objectives of, existing total maximum daily loads (TMDLs). EPA is committed to working closely with the States in the implementation of this framework. EPA Regions and Headquarters will work with States when appropriate to determine the proper response to an integrated plan.

I. Background

In recent years, EPA has begun to embrace integrated planning approaches to municipal wastewater and stormwater management. EPA further committed to work with States and communities to implement and utilize integrated planning approaches to municipal wastewater and stormwater management in its October 27, 2011 memorandum "*Achieving Water Quality Through Municipal Stormwater and Wastewater Plans.*"¹ Integrated planning will assist municipalities on their critical paths to achieving the human health and water quality objectives of the CWA by identifying efficiencies in implementing requirements that arise from distinct wastewater and stormwater programs, including how best to make capital investments.

¹ The October 27, 2011 memorandum is available at <http://cfpub.epa.gov/npdes/integratedplans.cfm>.

Integrated planning can also facilitate the use of sustainable and comprehensive solutions, including green infrastructure, that protect human health, improve water quality, manage stormwater as a resource, and support other economic benefits and quality of life attributes that enhance the vitality of communities. In February, 2012, EPA released “Planning for Sustainability: A Handbook for Water and Wastewater Utilities.”² The Handbook describes a number of steps utilities can take to build sustainability considerations into their existing planning processes and make the best infrastructure choices that protect water quality and ensure the long-term sustainability of infrastructure assets. The elements of an integrated plan which are described below are complementary to the elements in the Sustainability Handbook.

The integrated planning approach does not remove obligations to comply with the CWA, nor does it lower existing regulatory or permitting standards, but rather recognizes the flexibilities in the CWA for the appropriate sequencing and scheduling of work.

II. Principles

Following are overarching principles that EPA will use in working with municipalities to implement an integrated approach to meet their wastewater and stormwater program obligations under the CWA. Also presented are guiding principles that EPA recommends municipalities use in the development of their integrated plans.

Overarching Principles

1. This effort will maintain existing regulatory standards that protect public health and water quality.
2. This effort will allow a municipality to balance CWA requirements in a manner that addresses the most pressing public health and environmental protection issues first.
3. The responsibility to develop an integrated plan rests with the municipality that chooses to pursue this approach. Where a municipality has developed an initial plan, EPA and/or the State will determine appropriate actions, which may include developing requirements and schedules in enforceable documents.
4. Innovative technologies, including green infrastructure, are important tools that can generate many benefits, and may be fundamental aspects of municipalities’ plans for integrated solutions.

² The February 2012 Handbook is available at <http://water.epa.gov/infrastructure/sustain/upload/EPA-s-Planning-for-Sustainability-Handbook.pdf>.

Principles to Guide the Development of an Integrated Plan

Integrated plans should:

1. Reflect State requirements and planning efforts and incorporate State input on priority setting and other key implementation issues.
2. Provide for meeting water quality standards and other CWA obligations by utilizing existing flexibilities in the CWA and its implementing regulations, policies and guidance.
3. Maximize the effectiveness of funds through analysis of alternatives and the selection and sequencing of actions needed to address human health and water quality related challenges and non-compliance.
4. Evaluate and incorporate, where appropriate, effective sustainable technologies, approaches and practices, particularly including green infrastructure measures, in integrated plans where they provide more sustainable solutions for municipal wet weather control.
5. Evaluate and address community impacts and consider disproportionate burdens resulting from current approaches as well as proposed options.
6. Ensure that existing requirements to comply with technology-based and core requirements are not delayed.
7. Ensure that a financial strategy is in place, including appropriate fee structures.
8. Provide appropriate opportunity for meaningful stakeholder input throughout the development of the plan.

III. Elements of an Integrated Plan

Defining Scope

NPDES requirements for separate sanitary sewer systems, combined sewer systems, municipal separate storm sewer systems and at wastewater treatment plants may be included in an integrated plan. Each of the aforementioned systems may have different owners/operators responsible for the various sewer systems and treatment plants as well as different geographic service areas and different service populations. In addition, integrated plans may address source water protection efforts that protect surface water supplies, and/or nonpoint source control through proposed trading approaches or other mechanisms. When developing an integrated plan, a municipality/community must determine and define the scope of the integration effort, ensure the participation of entities that are needed to implement the integrated plan, and identify the role each entity will have in implementing the plan. EPA will continue to work closely with State and local governments to incorporate green infrastructure approaches to water quality within permits and enforcement actions, consistent with the practice over the past several years.

Plan Elements

An integrated program should be tailored to the size and complexity of the wastewater and stormwater infrastructure addressed in the plan. Although the details of each integrated plan will vary depending on the unique challenges of each community, an integrated plan generally should address the following elements:

Element 1: A description of the water quality, human health and regulatory issues to be addressed in the plan, including:

- An assessment of existing challenges in meeting CWA requirements and projected future CWA requirements (*e.g.*, water quality-based requirements based on a new TMDL);
- Identification and characterization of human health threats;
- Identification and characterization of water quality impairment and threats and, where available, applicable wasteload allocations (WLAs) of an approved TMDL or an equivalent analysis;
- Identification of sensitive areas and environmental justice concerns; and
- Metrics for evaluating and meeting human health and water quality objectives.

Element 2: A description of existing wastewater and stormwater systems under consideration and summary information describing the systems' current performance, including:

- Identification of municipalities and utilities that are participating in the planning effort and a characterization of their wastewater and stormwater systems; and
- Characterization of flows in and from the wastewater and stormwater systems under consideration.

Element 3: A process which opens and maintains channels of communication with relevant community stakeholders in order to give full consideration of the views of others in the planning process and during implementation of the plan.

- Municipalities developing integrated wastewater and stormwater plans should provide appropriate opportunities that allow for meaningful input during the identification, evaluation, and selection of alternatives and other appropriate aspects of plan development;
- Municipalities participating in an integrated wastewater and stormwater plan should, during the implementation of the plan, make pertinent new information available to the public and provide opportunities for meaningful input into the development of proposed modifications to the plan; and
- Where a permit or enforcement order incorporates green infrastructure requirements, the municipalities required to implement the requirements should allow for public involvement to assist in evaluating the effectiveness of the approach and to assist in successful implementation of the approach.

Element 4: A process for identifying, evaluating, and selecting alternatives and proposing implementation schedules which addresses:

- The use of sustainable infrastructure planning approaches, such as asset management, to assist in providing information necessary for prioritizing investments in and renewal of major wastewater and stormwater systems;
- The use of a systematic approach to consider and incorporate, where appropriate, green infrastructure and other innovative measures where they provide more sustainable solutions;
- Identification of criteria, including those related to sustainability, to be used for comparing alternative projects and a description of the process used to compare alternatives and select priorities;
- Identification of alternatives, including cost estimates, potential disproportionate burdens on portions of the community, projected pollutant reductions, benefits to receiving waters and other environmental and public health benefits associated with each alternative;
- An analysis of alternatives that documents the criteria used, the projects selected, and why they were selected;
- A description of the relative priorities of the projects selected including a description of how the proposed priorities reflect the relative importance of adverse impacts on public health and water quality³ and the permittee's financial capability;
- Proposed implementation schedules; and
- For each entity participating in the plan, a financial strategy and capability assessment that ensures investments are sufficiently funded, operated, maintained and replaced over time. The assessment of the community's financial capability should take into consideration current sewer rates, stormwater fees and other revenue, planned rate or fee increases, and the costs, schedules, anticipated financial impacts to the community of other planned stormwater or wastewater expenditures and other relevant factors impacting the utility's rate base. Municipalities can use as a guide the document "CSO Guidance for Financial Capability Assessment and Schedule Development," EPA 832-B-97-004) or other relevant EPA or State tools.

Element 5: Measuring success - As the projects identified in the plan are being implemented, a process for evaluating the performance of projects identified in a plan, which may include evaluation of monitoring data, information developed by pilot studies and other studies and other relevant information, including:

- Proposed performance criteria and measures of success;
- Monitoring program to address the effectiveness of controls, compliance monitoring and ambient monitoring; and
- Evaluation of the performance of green infrastructure and other innovative measures to inform adaptive design and management to include identification of barriers to full implementation.

³ An example of an informal tool to help identify priorities is given by "Combined Sewer Overflow Guidance for Screening and Ranking", EPA, August 1995. The guidance is available at <http://www.epa.gov/npdes/pubs/owm595.pdf>.

Element 6: Improvements to the Plan

- A process for identifying, evaluating and selecting proposed new projects or modifications to ongoing or planned projects and implementation schedules based on changing circumstances; and
- In situations where a municipality is seeking modification to a plan, or to the permit or enforcement order that is requiring implementation of the plan, the municipality should collect the appropriate information to support the modification and should be consistent with Elements 1 – 5 discussed above.

IV. Implementation

Implementing an integrated approach to wastewater and stormwater management may require coordination between State and federal NPDES permit and enforcement authorities. EPA recognizes the importance of and encourages early coordination between NPDES States and EPA on key implementation issues that may arise in individual integrated plans. This will ensure that plans will not need to be revised in order for them to be implemented. State NPDES permit authorities should initiate discussions with EPA on their efforts to address integrated plans that raise issues associated with ongoing federal enforcement actions and when addressing the initial integrated plans developed in the State or when a permit may potentially present a novel approach. EPA and States will determine the appropriate roles of permit and enforcement authorities in addressing the regulatory requirements identified in the plan. As discussed below, elements of an integrated plan can be incorporated, where appropriate, into NPDES permits, enforcement actions, or both. Permit issuance and implementation of existing permit and enforcement requirements and activities shall not be delayed while an integrated plan is being developed.

Permits

All or part of an integrated plan can be incorporated into an NPDES permit as appropriate. Limitations and considerations for incorporating integrated plans into permits include:

- Compliance schedules for meeting water quality-based effluent limitations (WQBELs) in NPDES permits issued for discharges from publicly owned treatment works (POTWs) and/or combined sewer overflows need to be consistent with the requirements in 40 CFR section 122.47. Where appropriate, an NPDES permit authority may include a compliance schedule in a permit for WQBELs based on post July 1, 1977 State water quality standards provided the compliance schedule is “as soon as possible” and the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them. Compliance schedules in permits should prioritize the most significant human health and environmental needs first.
- Reopener provisions in permits consistent with section 122.62(a) may better facilitate adaptive management approaches.

- Green infrastructure approaches and related innovative practices that provide more sustainable solutions by managing stormwater as a resource should be considered and incorporated, where appropriate, where they provide more sustainable solutions for municipal wet weather control.
- Appropriate water quality trading may be reflected in NPDES permits (*see* EPA's 2003 Water Quality Trading Policy).

Enforcement

EPA and the States may bring enforcement actions against municipalities to address noncompliance with the CWA. Enforcement tools include administrative orders, negotiated consent decrees, or other state formal enforcement actions that require compliance with various requirements under the CWA. All or part of an integrated plan may be able to be incorporated into the remedy of a federal or State enforcement action. Considerations for incorporating integrated plans into enforcement actions include:

- The integrated planning framework should ensure that all necessary parties to a consent decree or administrative order are involved (*e.g.* municipality, utility authority).
- When there is a history of long-standing violations without significant progress, enforcement is used to address past violations and establish a path for coming into compliance.
- Where an extended time frame is necessary to achieve compliance, enforcement orders should provide schedules for CWA requirements that prioritize the most significant human health and environmental needs first.
- How permitting and enforcement actions may be used in conjunction to ensure implementation of the integrated plans.
- Sufficient flexibility should be provided in enforcement orders to allow for adaptive management approaches.
- Green infrastructure approaches and related innovative practices that provide more sustainable solutions by managing stormwater as a resource should be considered and incorporated, where appropriate, where they provide more sustainable solutions for municipal wet weather control.
- Environmentally beneficial projects that are identified in an integrated plan and which the municipality is not otherwise legally required to perform, such as water conservation measures, may be included in a settlement agreement consistent with EPA's Supplemental Environmental Projects Policy⁴.

⁴ The May 1, 1998, policy is available at <http://www.epa.gov/oecaerth/resources/policies/civil/seps/fnl-sup-hermn-mem.pdf>.