

**INTEGRATED PLANNING AND PERMITTING,
PART 2: AN OPPORTUNITY FOR EPA TO PROVIDE
COMMUNITIES WITH FLEXIBILITY TO MAKE
SMART INVESTMENTS IN WATER QUALITY**

(112-95)

HEARING
BEFORE THE
SUBCOMMITTEE ON
WATER RESOURCES AND ENVIRONMENT
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED TWELFTH CONGRESS
SECOND SESSION

—————
JULY 25, 2012
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Committee on Transportation and Infrastructure



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ADDITION TO THE RECORD

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¹Cynthia Giles did not submit a written statement.



U.S. House of Representatives
Committee on Transportation and Infrastructure

John L. Mica
Chairman

Washington, DC 20515

Rich J. Rahall, III
Ranking Member

July 20, 2012

James W. Coon II, Chief of Staff

James H. Zoia, Democrat Chief of Staff

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

----- # -----

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

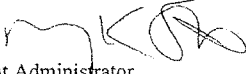



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

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>.

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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-herm-mem.pdf>.

**INTEGRATED PLANNING AND PERMITTING,
PART 2: AN OPPORTUNITY FOR EPA TO
PROVIDE COMMUNITIES WITH FLEXIBILITY
TO MAKE SMART INVESTMENTS IN WATER
QUALITY**

WEDNESDAY, JULY 25, 2012

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER RESOURCES
AND ENVIRONMENT,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2167, Rayburn House Office Building, Hon. Bob Gibbs (Chairman of the subcommittee) presiding.

Mr. GIBBS. Good morning. The Subcommittee on Water Resources and Environment of the Committee on T&I will come to order. Welcome. Welcome guests. This is our part 2 hearing on what we call integrated planning and permitting. I will open with my opening comments.

Again, I would like to welcome everybody. This is an opportunity for the EPA to provide communities with flexibility to make smart investments in water quality. This is a followup hearing to one we held back in December on EPA's proposed integrated framework.

In last December's hearing, we heard from several witnesses from State and local governments about how communities across the Nation are facing increasingly regulatory enforcement and financial pressures, not only to address sewer overflows and other aging wastewater infrastructure issues, but also to deal with numerous other burdensome regulatory issues that recently have become national priorities. These include more stringent and widespread regulation of stormwater discharges, nutrients and other pollutants in public drinking water systems which could lead to many communities having to install and operate, at great expense, treatment, removal and prevention technologies.

All of these initiatives are piling on additional layers of regulatory requirements and economic burdens that our communities are having to somehow deal with. A large portion of these regulatory mandates are going unfunded by Federal and State governments with the result that many municipalities have made substantial increases in investments in wastewater and public water infrastructure in recent years. Local communities and ratepayers are now increasingly getting economically tapped out.

In response to some of these issues, last year the EPA proposed an integrated planning and permitting policy that was intended to provide some flexibility in how communities managed their regulatory and enforcement mandates under the Clean Water Act.

At last December's hearing, we heard from witnesses about the proposed policy and some of the concerns they had with it. These include the continued central role of enforcement mechanisms in the integrated planning process rather than through the use of permits; inadequate consideration of stringent municipal budgets and affordability, especially in setting compliance timelines; and insufficient regulatory flexibility to adapt to new or changed circumstances.

Some of the witnesses also urged EPA to be more proactive and collaboratively assist communities through pilot demonstration projects to develop flexible, practical and affordable integrated plans.

I believe it is time for the national clean water strategy to evolve from a one-size-fits-all mandate and enforcement approach to an integrated strategy that recognizes the individual public health needs and water quality benefits of water and wastewater utilities and the resource limitations of communities.

I am pleased to see that the EPA has finalized its integrated regulatory planning and permitting framework, and I hope that the EPA is strongly committed to implementing this new policy. There seems to be some willingness on the part of the Agency to make this a planning and permitting approach that would largely take this out of the enforcement action realm.

However, I still have some concerns that some at the EPA still may not be willing to limit the Agency's enforcement efforts against municipalities. A continued emphasis on an enforcement approach, including consent decrees, will undermine the flexibility that the EPA is ostensibly seeking to provide under this policy. Of course, it remains to be seen how this initiative will turn out. The devil will be in the details on how it is implemented.

I would like to hear from today's State and local government witnesses about their thoughts on the EPA's now-finalized policy and whether EPA has adequately addressed their concerns. In addition, I want to hear from the EPA witnesses about how specifically the Agency plans to address the remaining concerns voiced by our State and local witnesses.

And I want to also hear from the EPA and the other witnesses what statutory or other impediments, if any, stand in the way of making this an effective initiative for both communities and the regulators.

Hopefully this initiative will truly give our communities the flexibility they need to prioritize their water quality requirements and address the huge unfunded costs associated with the growing number of mandates stemming from the EPA water rules and enforcement actions.

Now at this time, I yield to my ranking member, Mr. Bishop, for any remarks you may have.

Mr. BISHOP. Thank you very much, Mr. Chairman, for holding this hearing, and I say thank you to the witnesses for being here today.

As everyone in this hearing room knows all too well, one of the fundamental goals of the Clean Water Act was and still is to prevent the discharge of raw sewage and other pollutants into the Nation's waters. Since the passage of the law almost 40 years ago, significant investment in infrastructure has led to significant progress in achieving that goal. That, in turn, has led to significant improvements in the quality of our Nation's waters.

Much of that progress is threatened now by aging wastewater infrastructure in need of repair and replacement and the ever-growing challenges of stormwater runoff from streets, roofs and other impermeable surfaces. Faced with the staggering costs these upgrades will require and the difficult economic climate, many communities are looking to the EPA and to the Congress for assistance, both in terms of greater financial assistance to make necessary infrastructure upgrades and repairs, and for the flexibility to utilize comprehensive integrated planning to prioritize these investments.

Both elements, increased Federal financial assistance and the option of appropriate flexibility through integrated planning, are essential to ensure continued progress in addressing water quality concerns.

To that end, the EPA should be commended for the commitment it has made to work with States, municipalities and other stakeholders in developing its integrated municipal stormwater and wastewater planning approach. This voluntary approach, let me say that again, this volunteer approach, will allow interested communities to develop and implement effective integrated plans under the Clean Water Act to address storm and wastewater management and to benefit from the economic efficiencies that an integrated approach will provide while still achieving their human health and water quality objectives.

Yet, as the EPA has noted, the full benefits of the integrated planning approach may not be realized for some time as more and more communities come forward to develop individualized approaches to address their unique needs.

In my view, allowing sufficient time for this approach to be adopted on a case-by-case basis as communities come forward makes perfect sense, because if the opposite were true, and regulators were more interested in expediency than tailoring appropriate responses to address local needs, EPA and the States might be accused of forcing communities to accept a one-size-fits-all approach. However, I expect that many stakeholders will point to the finalization of the integrated planning guidance as a turning point on how to effectively address local water quality impairments in as short of a timeframe as possible.

Increasing flexibility under the Clean Water Act in the absence of increased infrastructure investment however, only addresses half of the challenge facing local communities and actually runs counter to the objectives of the EPA's integrated planning framework.

With respect to increased and new forms of infrastructure financing, communities are looking to Congress to step up to the plate. Unfortunately, while this is the second hearing the committee has held on the EPA's plan to promote integrated planning, we have taken no action on renewing the Federal financial commitment to wastewater infrastructure this Congress. While bipartisan legisla-

tion, such as H.R. 3145, the Water Quality Protection and Job Creation Act of 2011, has been introduced, there has been no legislative action on this comprehensive effort.

H.R. 3145 not only reaffirms our commitment to our wastewater infrastructure systems, but it also establishes new funding alternatives to achieve our long-term infrastructure goals.

So while EPA has done its job in responding to the needs of our States and local communities, this Congress and this majority has not been as responsive and is ignoring an opportunity to create jobs and improve water quality. I think this is unfortunate, and I also think it is a disservice to our constituents and to our districts.

Clean water infrastructure is not, nor should it be, a partisan issue. Innovative infrastructure financing such as the Loan Guarantee Program and Clean Water Trust Fund in my bill, H.R. 3145, can leverage millions in more private financing to address our huge backlog of water infrastructure needs and create tens of thousands of new jobs. At the same time, we must preserve the locally driven priority system developed under the existing Clean Water State Revolving Fund, a model that has served our communities, our States and our Nation well for the last 25 years.

To that end, I ask unanimous consent to include in the record a bipartisan letter that I and 17 of our colleagues sent to Chairman Mica asking that H.R. 3145 be added to the next available full committee markup.

Mr. GIBBS. So ordered.
[The letter follows:]

Congress of the United States
Washington, DC 20515

July 12, 2012

Chairman John Mica
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Mica,

As the number of legislative days in this Congress grows short, and the Committee's efforts to complete a surface transportation bill are now concluded, we urge the Committee to turn to other pressing infrastructure needs that warrant our attention. Specifically, we urge you to schedule a markup of H.R. 3145, the Water Quality Protection and Job Creation Act of 2011 that will make long, overdue investments in our nation's water infrastructure systems and benefit both our communities and our economy.

Just like surface transportation programs, the need for investment in wastewater infrastructure is great, and reauthorizing and reforming programs to rebuild our crumbling water infrastructure systems will create jobs. For, every \$1 billion we spend on wastewater infrastructure we can create as many as 33,000 jobs in communities across America while improving public health and the environment.

In 2008, states documented almost \$300 billion in wastewater treatment, pipe replacement and repair, and stormwater management projects that need to be fulfilled over the next 20 years. However, in 2011, Federal appropriations to the Clean Water State Revolving Funds totaled only \$690 million, just 1/20th of the annual amount necessary to address the State-identified needs to modernize and repair our aging systems.

The bipartisan Water Quality Protection and Job Creation Act of 2011 renews the Federal commitment to addressing our Nation's substantial needs for wastewater infrastructure by investing \$13.8 billion in the State Revolving Funds (SRF) over the next five years. Recognizing that additional resources will be necessary to address the level of need, the bill establishes two complimentary, new initiatives for the long-term, sustainable financing of wastewater infrastructure, while preserving the fundamental locally-driven SRF structure.

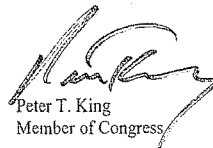
One of these innovative approaches includes direct loan and loan guarantee programs, often referred to as the "WIFIA approach," is designed after the popular Transportation Infrastructure Finance and Innovation Act or "TIFIA approach" for highway projects. The second approach is a Clean Water Infrastructure Trust Fund. Similar initiatives have been pursued by Republican and Democratic leaders of the Subcommittee on Water Resources and Environment, and when implemented in concert, would leverage billions of additional dollars to meet local wastewater infrastructure needs, create jobs, and protect our public health and environmental quality at a potentially-reduced cost to American taxpayers.

Meeting the critical water infrastructure investment needs of our local communities is not a partisan issue. These are investments that benefit our constituents, the economies of our States and communities, and provide the added benefit of protecting public health and the environment. That is why, in each of the last five Congresses, the Transportation & Infrastructure Committee has advanced legislative actions to rebuild our nation's wastewater infrastructure, including several overwhelmingly bipartisan votes in Committee and on the House floor under the leadership of former-Chairmen Shuster, Young, and Oberstar. It is imperative, that we continue that bipartisan effort until we are successful.

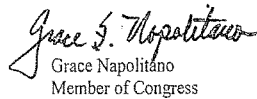
The Water Quality Protection and Job Creation Act of 2011 is a bipartisan proposal that enjoys broad support from the Associated General Contractors of America, the National Association of Clean Water Agencies, the Water Environment Federation, the National League of Cities, the Water Infrastructure Network, the American Society of Civil Engineers, the National Construction Alliance II, the American Public Works Association and many others. We urge the Committee to take action on this legislation at the next scheduled markup.

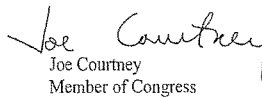
Sincerely,

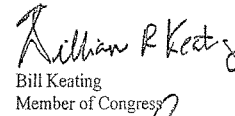

Tim Bishop
Member of Congress

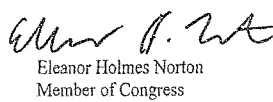

Peter T. King
Member of Congress

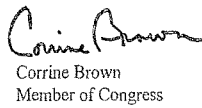

Bob Filner
Member of Congress

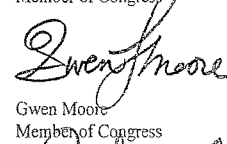

Grace Napolitano
Member of Congress

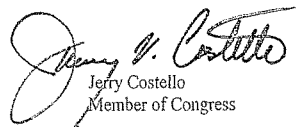

Joe Courtney
Member of Congress

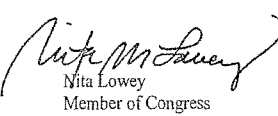

Bill Keating
Member of Congress

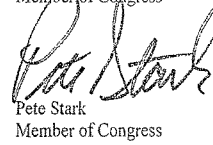

Eleanor Holmes Norton
Member of Congress

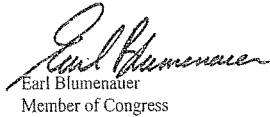

Corrine Brown
Member of Congress

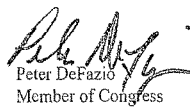

Gwen Moore
Member of Congress

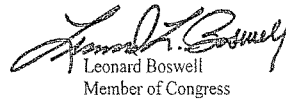

Jerry Costello
Member of Congress

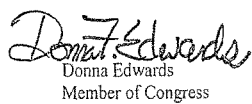

Nita Lowey
Member of Congress

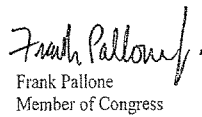

Pete Stark
Member of Congress

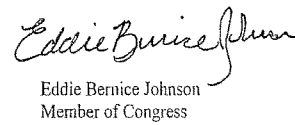

Earl Blumenauer
Member of Congress


Peter DeFazio
Member of Congress


Leonard Boswell
Member of Congress


Donna Edwards
Member of Congress


Frank Pallone
Member of Congress


Eddie Bernice Johnson
Member of Congress

CC: The Honorable Nick J. Rahall, II, Ranking Member, Transportation and Infrastructure Committee
The Honorable Bob Gibbs, Chairman, Subcommittee on Water Resources and Environment

Mr. BISHOP. Thank you, Mr. Chairman. This legislation has the support of several of the witnesses here this morning including the National League of Cities, the National Association of Clean Water Agencies and the Water Environment Federation, and for this support, I thank the witnesses.

I also note with some regret that we are having a full committee markup tomorrow of several bills, three of which are water-related bills, but Chairman Mica has not included H.R. 3145 on that list, and I do hope that at the next available markup, he will respond to both what many of our colleagues support, and what many of the stakeholders support.

So again, I applaud the EPA for doing its part to address the challenges facing our States, and I urge this majority to do the same. With that, I look forward to hearing from our witnesses, and I yield back the balance of my time.

Mr. GIBBS. The gentlelady from the District.

Ms. NORTON. I thank you, Mr. Chairman, for convening today's hearing on EPA's recently released integrated planning framework to work with the States toward providing reasonable flexibility and relief to jurisdictions like my own district, the District of Columbia, that are facing multimillion-dollar mandates to comply with Clean Water Act requirements.

One of our witnesses, representing the National Association of Clean Water Agencies, is George Hawkins, general manager of the DC Water and Sewer Authority. The District of Columbia is currently investing in a \$2.6 billion clean rivers project to address combined sewer overflows in the Anacostia River, Rock Creek and the Potomac River. The project was mandated by EPA and the Department of Justice through a consent decree entered into in 2005. DC Water is currently working with EPA to modify the consent decree to allow for green infrastructure to be used for a portion of the project.

Mr. Hawkins, who is a wonderfully innovative manager, understands all the issues before us. He was formerly director of the DC Department of Environment. He has not been content to spend ratepayers' funds on 20th-century technology, but seeks changes in the consent decree to enable DC Water to do a pilot using 21st-century green technology that will substantially reduce the cost of mandated upgrades.

In addition, DC Water is undergoing a nearly \$1 billion enhanced nitrogen removal capital program to further reduce the amount of nutrients discharged into the Potomac River and Chesapeake Bay watershed. This massive undertaking will allow DC Water to comply with EPA's National Pollutant Discharge Elimination System permit.

Since these projects are mandated and enforced by EPA, the District is forced to prioritize them over critical upgrades to the drinking water and wastewater infrastructure in the city, some of which was constructed during the Civil War. Recent incidents involving broken water mains and sewer backups highlight the need to maintain and improve the basic water infrastructure that is critical to the health and public safety of District of Columbia residents, Members of Congress, of the Federal workforce, and visitors.

Current budgets allow DC Water to upgrade only 1 percent of the infrastructure this year. Although the Federal Government is a major user, the District of Columbia's small pool of approximately 130,000 ratepayers has been asked to shoulder most of the burden of these major capital investments. DC residents are projected to see their average water and sewer bill increase over \$100 per month by the end of this decade, and despite the efforts of this committee, no relief in the form of Federal funding is in sight. As highlighted in a recent Brookings Institution report, the large gap between the very wealthy and the very poor in the District of Columbia makes EPA's affordability criteria based on median household income an inappropriate measure to gauge the impact of EPA-mandated projects on local ratepayers.

I will be interested in learning from the EPA how it plans to use the integrated planning framework to empower its regional offices to consider not only the affordability of these mandated projects, but also the public health and water quality return on investment that they provide. I also hope to hear that the framework will allow authorities like the DC Water to reassess their existing consent decree and permit requirements to provide flexibility to ensure the most innovative measures such as green technology can be considered.

I thank you and the ranking member again for this very important hearing, Mr. Chairman.

Mr. GIBBS. Representative Napolitano, do you have any comments?

Ms. NAPOLITANO. Yes, Mr. Chair, I do. Thank you very much. We thank you, and Mr. Bishop, for holding this very important hearing. To me it is very critical we invest in improving our aging wastewater infrastructure systems and water treatment because it is directly supporting a clean water supply.

As the ranking member of the Water and Power Subcommittee, we have held many meetings and hearings on the health of the great rivers and lakes in the United States. Our Nation depends on our downstream sources to be clean enough for drinking, for irrigation, and especially our economy. And as far as health issues are concerned that is also a very great concern.

Investing in clean water infrastructure does create jobs. \$1 million invested in water projects creates 12 to 16 jobs in southern California, according to the Economic Roundtable of Los Angeles. The water industry creates more jobs in southern California than the two leading industries in southern California, which are entertainment and housing. There is underemployment in the water industry, which indicates there is a great opportunity for job growth.

I strongly support, very strongly support H.R. 3145, the Water Quality Protection and Job Creation Act of 2011 and congratulate both Ranking Members Bishop and Rahall for introducing H.R. 3145. It provides \$13.8 billion in the Clean Water State Revolving Fund over the next 5 years, funding that is desperately needed to address the wastewater treatment issues facing our country.

I commend EPA. In California, they have been great partners with the councils of government that I have relationships with, and being able to look at how this affects the small cities also. EPA's most recent clean water needs survey found that the State needs

\$300 billion worth of wastewater system repairs over the next 20 years.

This bill also incentivizes the use of green technologies to reduce energy consumption. Water treatment plants have had the capacity for solar, wind and biothermal energy production, and we must invest in those opportunities and make that information available to all that need it or have availability to invest in their own upgrades. It will help solve our water quality challenges, and I urge the committee to bring up H.R. 3145 to help our communities solve the clean water challenges they face.

Providing a funding mechanism or assistance to some small cities that will never be able to afford it is a great opportunity for us to not only put people back to work, but to be able to solve some of the issues that small communities face in providing their residents with clean water, especially with regards to providing jobs and spurring the economy.

With that, I yield back the balance of my time.

Mr. GIBBS. Thank you. I believe that concludes all the opening remarks. I do have some written testimony. I ask unanimous consent for written testimony submitted on behalf of the Mayor of Peoria, Illinois, and the president of the board of trustees of the Greater Peoria Sanitary and Sewage Disposal District be included in the hearing record.

Is there any objection? There being no objection, so ordered.

[The written testimony follows:]

Testimony for the Record Submitted on Behalf of Jim Ardis, Mayor, Peoria, Illinois and Michael F. Menke, President, Board of Trustees, Greater Peoria Sanitary and Sewage Disposal District

**U.S. House of Representatives
Water Resources and Environment Subcommittee
Committee on Transportation and Infrastructure**

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

July 25, 2012

The following testimony is submitted for the record of the July 25, 2012 hearing on "Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality," on behalf of Mayor Jim Ardis and Board President Michael F. Menke.

Mayor Ardis is the mayor of the City of Peoria, Illinois (City). Peoria is the oldest community in Illinois, with a population of 115,007. Mr. Menke is the President of the Board of Trustees of the Greater Peoria Sanitary and Sewage Disposal District (GPSD). GPSD currently serves an area of approximately 65 square miles, and treats wastewater collected from 650 miles of sewer. Municipalities served include Peoria, Peoria Heights, Bartonville, West Peoria and Bellevue, plus adjacent unincorporated areas.

Peoria is a proud river city. The Illinois River is the reason Peoria exists. Our roots in commerce and industry can be traced to the Illinois River. Peorians' respect for the Illinois River led to the formation of the Greater Peoria Sanitary District and the construction of the sewage treatment plant in 1931, decades before most similarly sized communities had modern sewage treatment. This early investment, and more than 80 years of continual maintenance and improvements to the treatment plant and collection system, speaks to Peorians' stewardship for the environment, and has allowed us to submit proposals to the U.S. Environmental Protection Agency (EPA) that will meet current water quality standards at a proposed cost lower than EPA expected, and can

address most EPA issues in a 5-year permit cycle, rather than through court enforcement.

While our community values the Illinois River and the environment, we have other pressing needs competing for our financial and other resources. Peoria has a larger share of the population not in the labor force than the state average. The median income in the Peoria region is \$7,109 (13%) less than the state average. About 14.5% of all families in the City of Peoria live below the poverty level, a level more than 1/3 higher than the state average. Seventy-five (75) percent of Peoria Public Schools' enrollment of over 14,000 children are considered to be from low income families. Peoria has the third highest crime rate in Illinois, and the crime rate is 77% higher than the state average. Due to regional and national economic recessions, the City of Peoria workforce has been reduced by almost twenty (20) percent in the last 10 years. While we remain advocates of meeting environmental goals, we believe we must do so in the most cost-efficient way possible, so that we may devote more of our limited resources to improving our schools, reducing crime, and bettering our local economy in a time of national recession.

Like many communities, Peoria has a combined sewer system. During periods of no or normal rainfall, the combined sewage is sent to the GPSD wastewater treatment plant (WWTP) for treatment before it is discharged to the Illinois River in compliance with the District's National Pollutant Discharge Elimination System (NPDES) permit. In times of heavy rain events, GPSD treats the excess combined sewage in peak flow treatment facilities that have been permitted by the State of Illinois since the 1980's. During an average year, the GPSD WWTP treats approximately 9.5 billion gallons of wastewater, including combined stormwater and wastewater during periods of wet weather. In a typical rainfall year this represents more than 98% of all wastewater (wet and dry weather flows) entering the collection system being treated to NPDES permit discharge standards. While occasionally there are combined sewer overflows (CSOs) that discharge directly to the Illinois River, this system has served to protect water quality in Illinois waterways for over 30 years. In addition, Peoria occasionally experiences

sanitary sewer overflows (SSOs). However, these overflows generally are the result of localized conditions that occur in spite of the proactive sewer maintenance program that has been implemented by the GPSD. Additionally, these overflows rarely reach waters of the United States and therefore result in negligible environmental impact, no public health impact and no economic impact.

Over the past several years, however, EPA has decided to make sewer overflows and process bypasses an enforcement priority, and informed the City and GPSD that it considers its currently-permitted peak flow treatment facilities to violate the Clean Water Act. These facilities have consistently operated, for over 30 years, in compliance with the NPDES permit issued by Illinois EPA. In 2006, the City began negotiating with EPA over a Long-Term Control Plan to address the CSOs. In March 2010, the City made EPA a good faith offer to reduce overflows and meet all applicable water quality standards with a plan that would cost the citizens of Peoria \$90 million. EPA rejected the City's offer and, in November 2011, insisted that the City of Peoria and GPSD both enter into a joint consent decree with EPA to address CSOs and SSOs, as well as the peak flow treatment facilities located at the WWTP.

The Illinois River at Peoria is generally known to be impaired primarily due to silt and bacteria. CSO, SSO and wastewater treatment plant discharges have no impact on silt impairments, and only a limited impact on bacterial impairments in the Illinois River, due to the predominance of non-municipal sources. As a result, the substantial EPA-mandated expense now facing Peoria citizens will produce minimal or no discernible improvement to water quality in the Illinois River. The City and GPSD are, however, receptive to facilitating meaningful water quality improvements through silt management and control of non-point sources of bacteria.

The City of Peoria and GPSD are willing to address CSOs and SSOs in an integrated way, but our experiences with EPA demonstrate that the new Integrated Planning Framework has had limited to no impact on local sensitivity and flexibility.

Background on EPA's Integrated Planning Framework

EPA's June 5, 2012, "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Framework) is one response by EPA to a dialogue between EPA and city officials nationwide that has been taking place since October 2009. In this on-going dialogue, city officials have expressed concern to EPA and DOJ about the positions taken by EPA Regions and DOJ attorneys in negotiations regarding CSO and SSO controls. Specifically, cities have raised concerns about EPA and U.S. Department of Justice (DOJ) positions:

- Requiring local governments to spend to the limit of affordability, regardless of whether spending more money will result in meaningful additional water quality benefits.
- Taking a very narrow view of the costs that can be considered when examining the affordability of controls.
- Refusing to allow compliance periods longer than 20 years.
- Imposing constraints on the use of green infrastructure.
- Failing to consider the carbon footprint of new control technologies.
- Requiring local governments to enter into consent decrees that dictate specific technology controls for the next 20 years rather than imposing more flexible performance standards that allow controls to be adapted as experience is gained.

These concerns were expressed at a series of meetings sponsored by the U.S. Conference of Mayors. After EPA Headquarters officials denied that EPA was taking such positions in negotiations with cities, a technical meeting was held to provide specific factual examples of these concerns. That technical meeting took place in March 2011. In October 2011, EPA responded in part to the concerns expressed by cities by issuing a memorandum from Office of Water Assistant Administrator Nancy Stoner and Office of Enforcement and Compliance Assurance Assistant Administrator Cynthia Giles to the EPA Regions titled "Achieving Water Quality Through Integrated Municipal Stormwater and Wastewater Plans." (Attached) This memorandum includes some important statements. Specifically, it says that:

As we move forward in our work, we must be mindful that many of our state and local government partners find themselves facing difficult financial conditions. Their ability to finance improvements by raising revenues or issuing bonds has been significantly impacted during the ongoing economic recovery. We write this memorandum to make sure that we proceed as one EPA to assure that we work with states and communities to get the most effective as well as cost-effective approaches for meeting our shared objective of clean water that protects public health and the environment.

This memorandum also states that: "A comprehensive and integrated planning approach to a municipal government's CWA waste- and storm-water obligations offers the greatest opportunity for identifying cost-effective and protective solutions and implementing the most important projects first." Finally, the memorandum announced the Agency's plan to develop the Framework that was finally issued on June 5, 2012.

Evaluation of EPA's Success in Addressing Concerns Raised by Cities

We greatly appreciate EPA's goal of working "with states and communities to get the most effective as well as cost-effective approaches for meeting our shared objective of clean water that protects public health and the environment." We strongly agree with that goal and believe that EPA's interactions with cities on CSO, SSO, and other stormwater issues should be evaluated against that goal, as well as against the concerns initially raised to EPA through the U.S. Conference of Mayors. Using that goal and those concerns as a benchmark, we must say that, based on our experience in Peoria, Illinois, EPA Region 5's actions on the ground still fall short of the goals expressed and promises made by EPA officials in Washington.

Despite these short-comings, we appreciate EPA's commitment to improve the partnership with communities to address water quality problems and EPA's commitment to use the flexibilities in the Clean Water Act to achieve these goals. We also appreciate the focus in the final Integrated Planning Framework on green infrastructure and adaptive management. Finally, we agree that integrated planning can be a useful tool that can lead to more cost-effective approaches to solving water quality problems. However, there is still a significant gap between commitments from EPA Headquarters

and implementation in EPA Regions. This is a gap that remains unfulfilled by EPA's integrated planning framework. Examples of this gap, specific to the City of Peoria and GPSD, are summarized below.

1. Continued insistence on use of enforcement tools over permits.

The City of Peoria and GPSD have proposed to EPA that we jointly develop an integrated plan to be implemented through our respective Clean Water Act (NPDES) permits. While EPA has formally endorsed the use of its integrated planning approach, as described in the June 5, 2012 Framework memorandum, EPA Region 5 is continuing to insist that the City and GPSD enter into a consent decree to implement controls, rather than allowing implementation through our NPDES permits. Most recently EPA Region 5 rebuffed the request to implement the GPSD CSO/SSO controls using the permit, notwithstanding GPSD's proposal to complete those improvements within the period of the next NPDES permit renewal cycle.

EPA is taking this position despite the fact that the final Integrated Planning Framework states that enforcement is used, "when there is a history of long-standing violations without significant progress." That is ***certainly not*** the case in Peoria. The City and GPSD have ***no*** history of long-standing violations and were proactive in completing CSO improvements in the early 1990's at a cost of approximately \$10 million. Recently, the City has spent over \$4 million on planning and negotiations in an effort to develop a Long Term Control Plan acceptable to EPA Region 5.

The only excuse given by EPA Region 5 for refusing to use a permitting approach to implementing overflow controls was the fact that the parties had already begun negotiating a consent decree. However, no decree has been entered and even if one had, EPA also has made commitments that it will be flexible about reopening existing consent decrees to adopt integrated planning approaches.

2. Continued insistence on dictating specific engineering controls instead of performance measures.

We agree with the goal of protecting water quality, but do not agree that a community should be forced to go beyond that goal and implement engineering controls dictated by EPA Region 5. In Peoria, EPA Region 5 is insisting that it can dictate the precise number of CSO events that can occur, as well as the type of facilities that can be used to treat those discharges. In addition, EPA Region 5 is insisting that the City and GPSD cannot use peak wet weather treatment facilities to mitigate adverse water quality impacts of excess wet weather discharges, even though those facilities have been critical to ensuring that significantly more wet weather flows are treated. These facilities have been permitted by the State of Illinois for over 30 years (without objection from EPA), and have a consistent history of substantial compliance with the terms and conditions included in those permits. We believe that EPA does not have the authority to specify what treatment technology is to be used to meet the requirements of EPA's regulations.

For example, notwithstanding being properly permitted for over 30 years, EPA currently views GPSD's permitted peak flow treatment facilities as a bypass of secondary treatment. Even if that conclusion were accurate (which it is not), EPA has acknowledged that the bypass regulation does not mandate employment of a specific treatment technology. Instead, the regulation requires that a system be operated as designed and according to the conditions of the NPDES permit. 68 Fed. Reg. 63,048 (Nov. 7, 2003), citing *NRDC v EPA*, 822 F.2d 104, 123 (D.C. Cir. 1987). Given that, we fail to understand what authority EPA thinks it has to use the bypass regulation to prohibit the operation of specifically designed and validly-permitted peak flow treatment facilities.

We strongly believe that the GPSD permitted facilities meet the requirements of the Clean Water Act. EPA has acknowledged that biological treatment units generally cannot be designed to accommodate wide variations in flow volumes and influent strength (68 Fed. Reg. 63,046, Nov. 7, 2003). Given that, we do not understand what

authority EPA thinks it has to demand that publically owned treatment works (POTWs) provide biological treatment facilities to accommodate peak wet weather flows, which are highly variable in volume and influent strength.

3. Continued insistence on requiring a community to spend to the limits of affordability.

EPA is still asking the citizens of Peoria to spend to the limits of affordability even if spending more money will not result in meaningful water quality improvements. As noted above, EPA wants Peoria to eliminate as many CSOs as it can afford to eliminate, even though the additional CSOs eliminated by going from the City's \$90 million plan to EPA's suggested plan (that we estimate will cost almost \$500 million), will not result in any meaningful water quality improvements, because water quality standards would be fully met under the City's plan.

We believe that EPA may be taking these positions based on the same hide-bound interpretations of EPA policies that EPA Headquarters had disavowed. We agree with EPA Headquarters that existing EPA policies are flexible. For example, we believe that the 1994 CSO policy does not mandate the reduction of a specific number of CSOs, whether or not a water body is considered to be sensitive, as long as the designated use of the water body can be met. In Peoria, elimination of all CSOs is not physically possible. EPA's position is that the City and GPSD must eliminate as many CSOs as it can afford to. We disagree with that interpretation of the statute and the CSO Policy. That is, we do not believe that the statute requires EPA to impose additional requirements on cities above and beyond meeting water quality standards and we do not believe that the CSO Policy stands for the proposition that the only limits on CSO elimination efforts are the limits of affordability, even if a receiving water is designated as a sensitive area.

Conclusion

As public officials, we are working every day to protect the health and safety of our citizens and our rate-payers. We are good stewards of both tax dollars and utility revenues. We also are good stewards of the environment, who share with EPA the goal of protecting water quality. Unfortunately, based upon the recent experience of the City and GPSD, EPA's Integrated Planning Framework to date does not appear to have positively affected how EPA Region 5 is moving forward to address this issue. We remain hopeful that EPA will recognize the flexibility in the Clean Water Act and in its policies and refrain from asking the City and GPSD to spend more than is necessary to meet water quality standards. We are concerned that the current process will result in great financial expense to our citizens with little to no measurable impact on public or environmental health and the water quality of the Illinois River.

Thank you for your interest in and continued oversight of EPA's stated goal of finding cost-effective approaches to solving water quality problems through sensitive and flexible negotiations. We believe that, if they want to, EPA can successfully attain that goal.

Mr. GIBBS. I also ask unanimous consent that the hearing record be kept open for 30 days after this hearing in order to accept other submissions of written testimony for the hearing record.

Without objection, so ordered.

Today we have two panels. I welcome our first panel. I will go quickly through it and introduce everybody quickly and then we will come back to the mayor.

Our first panelist on panel one is Mayor David Berger, city of Lima, Ohio. He is testifying on behalf of the U.S. Conference of Mayors. We also have Mayor Ralph Becker, city of Salt Lake City, Utah, testifying on behalf of the National League of Cities; Mr. Todd Portune, commissioner of Hamilton County, Ohio, Board of County Commissioners; Mr. Walt Baker, director, Division of Water Quality, Utah Department of Environmental Quality, testifying on behalf of the Association of Clean Water Administrators; Mr. Carter Strickland, Jr., commissioner of the New York City Department of Environmental Protection; Mr. George Hawkins, the general manager of District of Columbia Water and Sewer Authority, testifying on behalf of the National Association of Clean Water Agencies. And I think we have another panelist. Go ahead.

Mr. VICORY. My name is Alan Vicory. I am a principal in the firm Stantec Consulting and I am here representing the Water Environment Federation, WEF.

Mr. GIBBS. OK. Glad to have you here.

Mr. Berger, the floor is yours, and I look forward to your testimony.

TESTIMONY OF HON. DAVID J. BERGER, MAYOR, CITY OF LIMA, OHIO, TESTIFYING ON BEHALF OF THE U.S. CONFERENCE OF MAYORS; HON. RALPH BECKER, MAYOR, CITY OF SALT LAKE CITY, UTAH, TESTIFYING ON BEHALF OF THE NATIONAL LEAGUE OF CITIES; TODD PORTUNE, COMMISSIONER, HAMILTON COUNTY, OHIO, BOARD OF COMMISSIONERS, TESTIFYING ON BEHALF OF THE "PERFECT STORM" COMMUNITIES COALITION; WALTER L. BAKER, P.E., DIRECTOR, DIVISION OF WATER QUALITY, UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY, TESTIFYING ON BEHALF OF THE ASSOCIATION OF CLEAN WATER ADMINISTRATORS; CARTER H. STRICKLAND, JR., COMMISSIONER, NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION; GEORGE HAWKINS, GENERAL MANAGER, DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, TESTIFYING ON BEHALF OF THE NATIONAL ASSOCIATION OF CLEAN WATER AGENCIES; AND ALAN VICORY, JR., P.E., BCEE, PRINCIPAL, STANTEC CONSULTING (FORMERLY EXECUTIVE DIRECTOR, OHIO RIVER VALLEY WATER SANITATION COMMISSION), TESTIFYING ON BEHALF OF THE WATER ENVIRONMENT FEDERATION

Mr. BERGER. Good morning. My thanks to Chairman Gibbs and this committee for inviting me. I am Dave Berger, and I serve as the mayor of the city of Lima. Though I am a life-long Democrat, my office is nonpartisan, and I have worked with elected officials of all stripes throughout my 23 years in office. It is in that same spirit that I am here today testifying on behalf of the U.S. Con-

ference of Mayors. Lima is currently engaged in negotiations with EPA over a long-term control plan for sewer overflows, so I have personal experience there as well.

As a member of the Mayors Water Council, I have participated in the over 2 years of discussions that led to EPA's integrated planning memorandum. We began those discussions in 2009, because cities were continuing to face threats of EPA enforcement and demands that cities adopt plans with astronomical costs far outside our financial abilities.

After our discussions, EPA unveiled integrated planning to address sewer overflow and stormwater issues in a coordinated way. EPA acknowledges that its framework does not address all of the issues brought to them by the mayors and have told us that they are constrained by the Clean Water Act, in particular, from providing some of those flexibilities.

First, I want to thank EPA for their engagement and for issuing the framework. The Conference recognizes that EPA put forward a major good faith effort to respond positively to our request for flexibility, and my written testimony highlights the positive aspects of the framework. But I would like to call your attention in particular to four positive aspects of the framework.

First, it recognizes the need for flexibility and embraces both green infrastructure and adaptive management. Second, it recognizes that cities have limited resources and uses priority setting to provide partial relief. It recognizes that there will be disproportionate burdens on low-income households and allows consideration of those burdens. And finally, it acknowledges that in some cases integrated plans can be implemented in permits.

However, the framework does not go far enough. The only substantive relief clearly provided by the framework is scheduling. It allows cities to prioritize cost-effective actions, but low-priority, low-benefit actions appear still to be mandated at a later date. The framework limits the use of permits for implementation with the result that, in most cases, EPA will continue to use enforcement tools that treat cities as criminals. The framework does not provide for consideration of safe drinking water regulations when setting priorities. And finally, and most importantly, the fundamental problem of affordability of controls is not addressed.

On the affordability issue, let me tell you how this works in my community. Lima is a proud community of modest financial means. We have shrunk from roughly 52,000 to 38,000 as more affluent households have moved to the suburbs. Our annual household median income is \$26,943—\$26,943. Nearly one-third of Lima's citizens live under the poverty threshold. Additionally, our demographic profile includes aging baby boomers that comprise a substantial and growing class of fixed income seniors. Our low-, moderate-, and fixed-income households are particularly vulnerable to increasing costs of basic services.

Implementation of the proposed CSO/SSO long-term control plan will raise the average annual sewer bill alone in Lima to \$872. While this increase may have little impact on our high-income households, its impact on our poor households will be devastating. Some 47 percent of the households would experience rates above 4 percent of their income. Almost 26 percent of households would ex-

perience rate increases to their annual sewer bills between 2 and 3 percent of their household income.

If you add water and sewer costs together, the lowest income household category would be required to spend over 10 percent of their income for water and sewer services alone. Indeed, 73 percent of the households in Lima would be paying over 2 percent of their income for water and sewer, 73 percent. These citizens need substantive relief that the current framework does not provide. According to EPA, the Clean Water Act ties their hands from providing more substantive relief.

So we need Congress to act. The financial resources of our citizens, my citizens, resident businesses and cities are limited, so the Clean Water Act and the Safe Drinking Water Act must be crafted in a way that explicitly acknowledges and addresses the reality of those limited local resources.

The Conference has five points to make about this. Congress must impose a cost cap on Federal clean and safe drinking water mandates.

Congress should provide Federal assistance at levels much greater than the current State Revolving Loan Fund programs, and that assistance should be in the form of grants, not loans. Loans, frankly, don't help us much.

It must provide a shield for cities from third-party lawsuits for cities that are working toward long-term compliance under a permit.

Congress should direct EPA to halt enforcement campaigns against local governments in favor of EPA programs for integrated planning, watershed planning and water quality permitting.

Congress must also act to prohibit EPA from exacting fines and penalties against local governments that are engaged in good faith efforts and are investing capital to comply with water and wastewater regulations under permits.

Cities are not criminals or enterprises that are tempted to pollute more to make more profit and we should not be treated as such. Cities are stewards of the public trust, a responsibility that we share with the State and Federal Governments, and should be accorded the respect of a shared stewardship of our environment.

We need Congress to provide relief. We need Congress to provide oversight and to remember that EPA has its authority because of the way the Clean Water Act was written and enacted by Congress. We need Congress to act.

Thank you for the opportunity to address you.

Mr. GIBBS. Thank you.

Mayor Becker, the floor is yours. Welcome.

Mr. BECKER. Good morning, Chairman Gibbs, Ranking Member Bishop and members of the subcommittee. I am Ralph Becker. I am the mayor of Salt Lake City, and I am here today on behalf of the National League of Cities, the oldest and largest organization representing cities and towns across America. I also serve on the U.S. Conference of Mayors Board of Directors.

Salt Lake City is unusual in that from our valley at about 4,200 feet and where the Great Salt Lake is, we see our peaks over 11,000 feet immediately next to us. And so from our watershed that is supplying our waters to our ultimate discharge in the Ter-

minal Lake, we have the full spectrum of water supply and dealing with wastewater and stormwater.

I appreciate the opportunity to share our perspective on the important role of clean water infrastructure investment in our communities and how the U.S. Environmental Protection Agency and Congress can partner more effectively with our local governments to make smart investments to protect water quality. On this, the 40th anniversary that we are approaching of the Clean Water Act and the enormous benefits that we have all received in our country from that Act, it is time for this Congress to take a fresh look at how we can achieve those goals better.

We congratulate and applaud EPA's integrated stormwater-wastewater planning framework published on June 5th of this year. The framework recognizes awareness of struggles by municipalities in meeting requirements and the conflicts that arise when weighing environmental impacts. Storm and wastewater issues are interdependent and intrinsically tied to environmental considerations.

We are in support of the current framework's benefits, but as was mentioned by Mayor Berger, we feel strongly that affordability, flexibility and use of permitting in place of consent decrees, better solutions will be found.

Speaking towards affordability, water rate and tax increases on residents to fund regulatory mandates should be reasonably affordable. Affordability needs to be assessed based on impacts to the lowest community economic level, and the integrated planning framework that provides communities with compliance schedules with options to prioritize funding for projects with greater positive impacts are certainly very valuable. This approach allows a community to produce a viable plan from several options to afford the greatest environmental benefit.

To flexibility, a flexible approach to integrated planning would allow communities to prioritize needs and consider in its entirety the financial commitments that we make. We recommend the ability to extend the permit cycles to longer timeframes to align with realistic and achievable goals of water quality improvements. We believe that an integrated framework, now limited to consideration of storm and wastewater, should include pending drinking water treatment requirements under the Safe Drinking Water Act. For Salt Lake City and many cities, all of these systems are integrated and tied to a much broader set of environmental considerations.

As has been mentioned and I mentioned, the implementation of an integrated planning framework can most effectively and efficiently be achieved through the permit planning process rather than consent decrees.

Moving forward, addressing the policy changes is just one part of the equation in addressing our Nation's water-related challenges. Lack of water quality infrastructure threatens local and regional economies, the environment, and public health and safety. Like other communities, 70 percent of Salt Lake City's water infrastructure is beyond expected design life and in need of substantial funding. We have made tremendous commitments for well over a century to that end.

We call on your support for new funding mechanisms. Even as local governments fund 95 to 98 percent of all water and wastewater infrastructure investment, needs in our communities continue to grow. The most recent clean water shed needs survey estimated that the 20-year investment needed to upgrade wastewater and stormwater infrastructure to meet the goals of the Clean Water Act to be over \$298 billion, with an additional survey focused on drinking water infrastructure estimating needs over a 20-year span in excess of \$334 billion. Local governments need a reliable long-term source of substantial capital to close the gap between current expenditures and anticipated needs.

The U.S. marked the 20th century with breakthrough in investment in water infrastructure that lifted us to prominence for the past 100 years. We ask that you lead and serve by addressing these needs so we can move forward together and lead the world into the next century.

As we approach the 40th anniversary of the Clean Water Act, local governments remain committed to meeting the water infrastructure needs and water quality protection standards in our communities. We hope that the Federal Government remains committed to being a full partner in this important endeavor. Because the Nation's cities are working to improve our aging infrastructure, meet Federal regulatory requirements, create and retain jobs and foster a climate of economic growth in our communities, a partnership with the Federal Government is essential.

We look forward to working with you on a long-term solution to our Nation's water infrastructure needs and with EPA to ensure that this integrated planning framework approach can help communities meet water quality protection standards in an affordable and flexible manner.

Thank you for the opportunity to speak on behalf of America's cities and towns. I look forward to your questions.

Mr. GIBBS. Thank you.

Mr. Portune, the floor is yours. Welcome.

Mr. PORTUNE. Good morning, Chairman Gibbs, Ranking Member Bishop and members of the subcommittee. My name is Todd Portune, and I am testifying here today on behalf of the citizens of Hamilton County and the citizens of the communities that make up what we have called the "Perfect Storm" Communities Coalition, so named because we are communities dealing with the perfect storm of high unemployment, high home foreclosure rates, stagnant economic growth and an exodus of business and industry, while being mandated to meet expensive CSO and SSO wet weather consent decrees and stormwater regulations.

Our coalition very much appreciates the subcommittee holding this second oversight hearing. It is certainly evidence of and supports the fact of the need for congressional action and oversight over EPA and the integrated planning process that EPA has put forward through their final integrated planning and permitting policy framework.

We are grateful for the steps forward that EPA has taken, but believe that it falls far short of what is necessary. We believe that EPA must find a regulatory approach consistent within the Clean Water Act and existing regulations that would provide commu-

nities like mine and of our coalition the flexibility we need to meet these challenges in a more affordable and cost-effective manner, and we hope that the Agency's final framework with your oversight and with congressional action will help us accomplish this goal.

Mr. Chairman, Ranking Member, and members of the committee, we were very encouraged at the first oversight hearing when there was interaction between Chairman Gibbs and Ms. Nancy Stoner, Acting Administrator for the EPA Office of Water, about whether EPA was open to using a pilot community project, and in particular, the 15- to 20-pilot communities in implementing the framework that was proposed by our coalition.

Ms. Stoner answered in response to your question, "Yes, that is what I was talking about in terms of those who have already done a lot of thinking and planning. We are hoping those could be initial pilots for us, and others could learn from their successes."

She went on to say, "Our strategies that we are working on now would identify how we would like to work with communities through pilot projects and other means as well."

Finally, Mr. Chairman you asked if EPA would have something moving forward by spring, to which she replied, yes.

Now, clearly, there is a step forward with the framework that has been presented. But with respect to showcase communities, while EPA will say that they have a showcase community aspect of this, the truth of the matter is that it is not a true demonstration program or showcase community process. Contrary to that, it is continuing the long-time practice of negotiating judicial decrees and leaving individual communities to figure it out by themselves.

Under EPA's integrated policy and the most recent green infrastructure fact sheets, all of the financial burden and legal risk involved in developing an alternative framework remains on local communities. Communities are given the choice of pursuing alternative approaches without direct financial, technical or related support from EPA.

If a local community has access to money and expertise and they get it right, EPA will embrace them. If, however, they get it wrong, EPA and the DOJ will leave them subject to continued enforcement to figure it out a second time. And this system of forced local experiments without Federal funding is wasteful and inequitable. We know there is a better way, a way that does not ignore the mandates of the Clean Water Act, but does not continue the command and control regulatory system that is inconsistent with the financial realities of America's cities, towns and counties.

Our coalition has repeatedly requested that EPA establish between 15 and 20 demonstration partnerships in each of the next 5 years in communities across the Nation currently facing expensive mandated wet-weather improvements. We want to see these partnerships transparently highlighted to show the Congress and other communities how EPA and local communities can work together to implement flexible, practical, affordable wet-weather solutions. And by working with pilot communities, EPA could demonstrate how the use of new innovative approaches can result in the same or better water quality results for smaller investment of local taxpayer dollars.

Under our proposal, the coalition's proposal, EPA would be leading the process, working in partnership with local communities, lending EPA's own significant body of resources and expertise to the effort. The end product will be the development of the foundational data and results that then can be replicated across the Nation with confidence of outcome and result. Anything less continues the current, unacceptable process of fragmented, uncoordinated and differing approaches and outcomes. There is a better approach, and that is for a national policy to be implemented, and the coalition's process is the way.

I would like to address the affordability question as well, Mr. Chairman. In my own community, we have cut our county budget by over 35 percent since 2007. Because of the recession, we have been forced to reduce our budget for all operations of the county, corrections, courts, law enforcement, public works projects of road, highway and bridge repairs; auditor, recorder, treasurer, coroner, all the other facets of county government have been cut by over \$100 million in 5 years, eliminating over 1,500 jobs in the process. We can neither borrow money nor print money to balance our budget. We can only spend what we have, and consequentially, we have had to make due with less, with no end in sight.

Yet in the midst of this horror story, CSO and SSO mandated driven sewer district spending continues to increase. Since the recession began, our bipartisan county commission has been forced to increase sewer rates by over 50 percent. Our sewer district, now facing hundreds of millions of dollars of consent decree mandated spending, projects another 18 percent in rate increases over the next 2 years.

Since 2004, when our decree was approved by the Federal court, sewer rates have been increased 9 consecutive years cumulatively by more than 130 percent. Few, if any, people have their incomes increase by 10 percent a year or double every decade.

We are spending for the entire 2012 budget for all of Hamilton County \$207 million, but our sewer district budget is \$380 million; \$202 million in consent decree driven capital projects and \$180 million in operations, \$90 million of which is payment on debt service. We have spent over \$400 million in consent decree mandated work so far. We have another \$1.1 billion in 2006 dollars in phase one spending with a phase two consent decree program estimated to cost another \$2 billion or more.

There is no balance in this, Mr. Chairman. There is no fairness. And my constituents rightfully ask why are they paying more for sewer repairs each year than I raise from all of the revenue sources for all other county operations. How do I justify raising sewer rates to unaffordable levels at the very same time I cannot provide for police patrols, am closing down jails, cannot fix my roads and bridges, have endured 50 percent cuts in human service delivery at the same time that I have a 40-percent increase in demand for human services. Help. We are all in favor of clean water, but there must be balance to the process.

The current EPA regulatory policies and enforcement-led approaches through consent decree simply directs local communities to pay for massive, expensive, and in some instances, outdated concrete and steel approaches. There has got to be a better way.

Hamilton County, Ohio, and the Perfect Storm Coalition looks forward to continuing to work with you, Mr. Chairman, with members of the subcommittee, and with EPA in developing and ensuring the implementation of innovative flexible approaches in meeting wet weather challenges, including the creation of needed demonstration communities that will showcase EPA's commitment to cost-effective, alternative approaches to expensive water quality challenges faced by communities like mine and those of our coalition.

I thank you for the opportunity and look forward to answering the committee's questions.

Mr. GIBBS. Thank you.

Mr. Baker, welcome. The floor is yours.

Mr. BAKER. Good morning, Chairman Gibbs, Ranking Member Bishop, and members of the subcommittee. My name is Walt Baker. I am the director of the Utah Division of Water Quality and currently serve as the president of the Association of Clean Water Administrators on whose behalf I offer testimony today. ACWA is the national nonpartisan professional organization representing State, interstate and territorial water quality officials charged with implementing the Clean Water Act, and in particular, the National Pollutant Discharge Elimination System permitting program.

I am pleased to come before the committee today to again present testimony on the integrated planning initiative. I offer abbreviated remarks drawn from my longer written testimony which has been submitted for the record.

I reiterate the Association's support for sequencing Clean Water Act requirements to allow municipalities to address first those projects that have the greatest impact on water quality. Such sequencing is not a new concept. However, a wider embrace of sequencing is important in these times of economic hardship. Moreover, EPA's willingness to develop this initiative sends a powerful, clear and welcome message to municipalities, but we need to do more.

Following the release of the draft framework in January of this year, ACWA members participated in five EPA-hosted stakeholder workshops, submitted written comments on the draft and held calls with EPA to further discuss the draft document. EPA has been very receptive to State comments and questions.

At the workshop, several elements of integrated planning were clarified. Integrated planning does not remove the obligation to comply with the Clean Water Act nor the consequences of not complying with the Clean Water Act. Clear, candid and open communication with communities is critical to ensure there is a full exploration of the options and flexibilities within the Clean Water Act so that the parties understand what is doable and what is not doable.

If communities are looking for amnesty from Clean Water Act provisions through this initiative, they are likely to be disappointed. But some uncertainty remains. Third-party lawsuits loom if States and EPA through integrated planning are considered to be deviating from their obligations to enforce the law. It is clear that States will take the primary role in reviewing and approving

a municipality's integrated plans. EPA's involvement in approving or vetoing the plans is less clear.

I would like to offer the following additional thoughts on EPA's final integrated planning framework and initiative as a whole. One, we urge EPA to further develop guidance on financial assessment and affordability as cost will play a central role in the prioritization effort.

Two, we are pleased to see an adaptive management component in the final framework. Flexibility will be key to implementation.

Three, drinking water and groundwater elements should find a place within the integrated planning framework.

Four, confusion seems to exist in some EPA regions as to the ability of compliance schedules within NPDES permits to exceed 3 years, let alone the 5-year life of the permit. This issue needs to be resolved by EPA headquarters.

Overall, States have largely been supportive throughout the development of EPA's integrated planning framework and remain supportive of the general concept of allowing municipalities to sequence Clean Water Act requirements in ways most appropriate for the specific entity. However, some of our concerns will not be put to rest until we see actual case studies progress.

We encourage EPA to consider developing guiding principles based on early examples to assist others.

Utah lost one of its native sons last week in the passing of noted author, educator, businessman, and motivational speaker Stephen R. Covey who wrote, "The main thing is to keep the main thing the main thing." Our main thing must be to protect our precious and irreplaceable water resources. ACWA believes it is possible to do so with an eye to well thought-out approaches, mutually agreeable priorities, fiscal responsibility and reasonable timeframes.

I would like to conclude by noting that the success of integrated planning hinges on the continued transparency, communication and collaboration among all involved parties throughout the plan development and implementation process. We look forward to continuing our work with EPA as this initiative proceeds.

Thank you for this opportunity to share ACWA's thoughts on this, and I will take any questions later.

Mr. GIBBS. Thank you.

Mr. Strickland, welcome. The floor is yours.

Mr. STRICKLAND. Thank you, and good morning, Chairman Gibbs, Ranking Member Bishop, members of the subcommittee. I am Carter Strickland, commissioner of the New York City Department of Environmental Protection, or as we are known in New York City, DEP. On behalf of Mayor Michael Bloomberg, thank you for the opportunity to testify on the U.S. Environmental Protection Agency's final integrated planning framework, which I might say at the outset is a very welcome development. We were involved in providing testimony and development of this integrated planning framework, and we do note that the EPA has amended it to some degree.

We appreciate several clarifications. One involves the role of the States. It is very important to us. For example, our water quality data shows that our biggest challenge, like a lot of other cities, is combined sewer overflows. We recently, in mid-March of this year,

entered into a consent order with our State, our primary regulator, by which we are committing an additional \$1.9 billion in traditional grant infrastructure and \$2.4 billion in green infrastructure.

We think this is the right way to go. We think it is in accordance with some planning efforts that we did initially. And we are obligated under both orders and SPDES permits to undertake a variety of measures with regard to both CSOs, including the development of long-term control plans over the next 5 years, 11 separate ones, and such measures as the cleaning of our 136 miles of interceptors, which we just completed after a 2-year effort.

Clearly, for the framework to succeed it needs to recognize and where appropriate, defer to State authorities which are often the primary regulators. I will note that we believe that long-term control plans are, in fact, integrated plans and can become them, and new requirements should be held in abeyance until those plans are developed.

We also appreciate the framework's explicit reference to in the final version and encouragement of the use of planning for sustainability and other related documents and guidance put out by the EPA. These documents provide suggestions for programmatic areas and approaches that also match community goals while appropriately recognizing that the details of these programs cannot be known in advance or dictated from any central authority, but rather, must be developed by the operating entity.

DEP supports the planning approach that would help municipalities prioritize infrastructure investments in order to maximize water quality benefits and encourage the use of innovative and sustainable approaches such as green infrastructure. That, after all, is the approach of not only the long-term control plans, but planning documents such as New York City's PlaNYC, or comprehensive sustainability plan.

A number of our comments and recommendations on the draft framework have been addressed and are consistent with the final framework, but since the level of detail in the framework has not changed dramatically since the draft version, our initial questions regarding the specifics of how integrated planning would be implemented remain unanswered and we think it is certainly a matter that the subcommittee should continue to monitor.

For example and first, I will note that the final framework for the integrated plan includes a discussion of financial capability and refers to the EPA's 1997 guidance document. However, New York City DEP has concluded our own affordability assessment and we have come to realize that the criteria outlined in the guidance documents do not provide the complete story with respect to affordability concerns of both the Agency and our ratepayers.

For example, we found that the use of median household income as an affordability indicator has several limitations for a city like New York City where household incomes are not distributed around the median. That means that we have a lot of wealthy people and we have a lot of poor people. Approximately 20 percent using Federal measures of our population is living below the Federal poverty level, which is very low.

Furthermore, the New York City Center For Economic Opportunity has noted some of the deficiencies with current measures of

poverty and developed an alternative poverty threshold measure based on methodology from the National Academy of Sciences. Based on this new threshold, a higher percentage of New York City residents are living in poverty than the Federal poverty rate portrays. Our study estimates 25 percent of New York City households, that is 755,000 households, over 1.6 million people, have wastewater and sewer costs that are 2 percent or more of their household income.

These rates vary across the city. In the Bronx, for example, 40 percent of households have a household income for which 2 percent or more is dedicated to water or wastewater costs. With projected future rate increases, the burden on this vulnerable population will increase, and we believe this is a significant environmental justice issue for this subcommittee to consider.

Therefore our study recommends that residential affordability should consider income distribution, poverty, unemployment and other economic burdens, such as the high cost of living in New York City and other urban areas, all of which inform the environmental justice issues that the Federal Government is rightly concerned about.

And affordability must consider the cumulative impact of long-term debt, which means that utilities have rising debt service that will cause rates to increase for the foreseeable future. For example, this year, New York City DEP will spend 42 percent of our operating budget, that is \$1.6 billion, on debt service alone. We have \$26 billion in outstanding debt. That debt service has increased 176 percent between fiscal year 2002, it starts for us in July, and fiscal year 2011. Each community is unique, obviously, so the framework should provide an opportunity to bring all relevant financial indicators and information to the table.

EPA has clarified that the integrated planning framework is limited to wastewater and stormwater. Many folks have mentioned that should include the Safe Drinking Water Act obligations. We believe that is the case. Over the last 10 years, we have spent \$20 billion total on capital costs, pretty evenly split between water and wastewater costs. All of that, so \$10 billion each. We don't want to exclude \$10 billion from consideration that we spent on water services. That goes into our rate and that is paid by our ratepayers.

In addition, the framework seeks to balance various mandates without recognizing the value of investment in nonmandated infrastructure. These are the replacement costs of our aging infrastructure that many folks have mentioned. New Yorkers want and deserve nonmandated, but still critical investments in programs to build storm sewers, replace storm and sanitary lines, replace mandated equipment according to a prudent, asset management review. And I think if you did a survey of the folks at this table and utilities across the country, the number one issue would be urban flooding, for which we spend a lot of money. Completing the full build-out of the storm and sanitary sewer system is an important priority for our city and others.

Finally, the EPA's and Department of Justice's enforcement actions must be consistent with this framework, especially its consideration of State orders and permits, as well as the general principle that the details of programs will be left to operating agencies. Un-

fortunately, over the past few years the EPA and DOJ have been bypassing the permit process and regulating by consent order with provisions that have a stifling level of detail. The Federal Government is not in the business of operating utilities, not yet anyway, and municipalities need the ability to make operational decisions based on engineering judgments.

In closing, we see integrated planning as a way for EPA, State regulators and municipalities to sit down and prioritize various water quality efforts so that there will be less top-down decision-making, more collaboration and consensus among government agencies, for which we consider ourselves a member. This would vest discretion in local governments to invest scarce dollars in those projects that meet critical needs and achieve the greatest public health benefits. The EPA's framework is a good start, but it is far from sufficient to realize this vision.

Thank you for the opportunity to testify.

Mr. GIBBS. Mr. Hawkins. Welcome. The floor is yours.

Mr. HAWKINS. Good morning, Chairman Gibbs, Ranking Member Bishop. My name is George Hawkins. I am the general manager of the DC Water and Sewer Authority, or DC Water as we know it, and the chair of the Money Matters Task Force for the National Association of Clean Water Agencies.

I am delighted to be here today to discuss EPA's integrated and municipal stormwater and wastewater planning approach framework. It is a very good step forward. I also want to mention, I am grateful for the comments of Congresswoman Norton, my Congresswoman. I thought it was both eloquent and substantive, and many of my points will track many of the points that you made.

I also want to offer my greetings to Congresswoman Edwards. Part of the flow from your district actually comes through to our facility at Blue Plains. You have been a strong supporter over time, and I am grateful for that as well.

My points are going to be in five, a handful of points, number one to provide context, very consistent with what you just heard from my friend, Carter Strickland.

In the last 2 weeks we have had three floods in the Bloomingdale neighborhood of Washington, DC. This is a neighborhood just south of the McMillan Reservoir just west of here, three significant floods in 2 weeks.

I have been out to the citizens, I have walked the streets. We have mobilized all of our resources. The fundamental problem is the trunk sewer that serves that entire neighborhood goes entirely the length of Florida Avenue all the way down to the Anacostia, was implemented and constructed by the Federal Government at the turn of the century, as well as all the lines that feed into it. They simply are not big enough to contain the flow that is going into the system which is handling both stormwater and wastewater.

The hydraulic pressure of all of the flow and the kinds of storms we have had is so great, it is popping off the manholes shooting them into the air so that we have to bolt them down, or else they will shoot and can hurt someone and shooting water 3 to 4 feet in the air coming out of the system, flooding into basements. If we bolt the manholes on top of those pipes, the hydraulic pressure in

the pipe, that flow has to go somewhere, and it causes sewage backups to go back up the pipes to businesses and residences.

Now I have stood in front of the citizens, they are angry about this for understandable reasons. We have a solution to this problem, and it costs \$600 million. You cannot replace one little piece of the sewer line anywhere, because it would connect to the next line, which would be too narrow. It is like trying to expand traffic on the beltway by doing a 200-yard addition to the road, then it would hit the next choke point and be backed up.

We have to replace the whole system. It is that kind of replacement that is fundamental to the public health, welfare and every job in the District, but is not mandated, and it is what every system in this country, most of which were built when we urbanized America, at least in the Midwest and the east coast at the same time this bill is coming due nationwide. But that is the context. What our customers want is the system to work. That is what delivers every job in every house.

Second, in comparison to that is the mandates we face. Congresswoman Norton had summarized them, I will just be brief, one is a \$2.6 billion project to build mammoth underground tunnels larger than Metro tunnels, which all of you have been on, in a gigantic system underground that would take much of this flow and transport it down to Blue Plains. We are deep into building that project now. It is the largest public project in Washington, DC, since Metro underneath our feet.

A second billion-dollar project to Blue Plains would enhance nutrient removal. The District is the only jurisdiction in the entire Chesapeake Bay that met the 2000–2010 goals for Chesapeake Bay reductions, but that has been because of expenditures made at Blue Plains, which is a regional expenditure, which is why the support from both Maryland and Virginia is important. That is a billion-dollar project.

Those two projects alone is \$3.6 billion of expenditures that are mandated. That does not talk about the MS-4, the separate storm sewer obligations that are coming, TMDL requirements and perhaps, although this is a challenge of what is going to be the requirement for every one of those sewer lines that go directly to the river, not to our plant, which needs to be done.

Third is the reality of decreasing returns at the scale. The way the Clean Water Act is set up, to me one of the most successful progressive statutes in the history of government, nonetheless, has run into the reality of decreasing returns. The law is about eliminating pollutants, the National Pollutant Discharge Elimination System is how the permit system is identified.

However, eliminating means that as you eliminate and you get to the margin, your costs become logarithmic and start firing up the scale for that next incremental improvement. It costs \$15 to remove a pound of nutrient when we began at Blue Plains. Today it costs us \$476 per pound of nutrient to eliminate nutrients at Blue Plains, and reducing much less for the costs.

So we spent \$1 billion to get one-tenth of the protection of what we had spent \$100 million to do in the past, and that is only going to get more expensive at the margin.

Fourth point is affordability. We are doubling the percentage of the low-income residents of the District who are unable to pay their bills or stressed by paying their bills due to the costs. Now the median household income disguises that reality, because as we all know, Washington, DC, is a city of two income levels: one that is quite high and one that is quite low.

If you take the median income to evaluate the cost of something, you are going to understate what that cost is to someone of significant means, and overstate the ability of our low-income residents to pay the same costs. When EPA evaluated the per capita costs of capital improvements in the country, the District of Columbia came up with the highest per capita costs.

We have a very large region. It is important to remember we have 130,000 connections in the District. It is not a big city itself, and it is those connections that are paying these gigantic costs.

Affordability, I do personally every public outreach meeting in the city that we do on our retail rates. I went to every ward in the city this spring describing the rates that we propose for 2013, which will equal a 50-percent rate increase in the 4 years I have been connected to DC Water as general manager.

In two of those meetings, we had to have law enforcement called because our citizens were angry. They are angry for two reasons: One is they are angry about the cost, the simple escalation, even if it seems that it is a good value relative to other costs, well, it costs less than a cell phone bill, it costs less than a power bill.

When you have a budget that has been set over time and you have designated a portion of that budget to a cost, and that one is increasing far faster than inflation, it doesn't matter what it costs compared to other things, you have your budget when you are on a fixed income, and that budget is being exceeded by too many of our residents.

The other challenge our residents tell us is what about those water mains. What about the challenges of the day-to-day delivery, and part of our challenge is our funding first goes to mandates, and second, to the operational needs.

I want to point out as a point of fact, in Washington, DC, if you take every capital dollar spent in the District for District work, school, fire, police, every building, road and bridges, \$1 in \$3, one of every three capital dollars, is spent on DC Water projects. That is the scale of what the system is delivering.

In that context, my last thoughts is about the integrated plan. It is a very important step forward. We are negotiating in the District, as the Congresswoman mentioned, the potential opening of our consent decree to allow for green infrastructure. There is no question with the leadership of Cynthia Giles and Nancy Stoner, and the Regional Administrator Shawn Garvin for region 3, we have seen a sea change in the negotiations we are undertaking with the Agency in order to open that consent decree.

This is a good change, integrated planning is good, although I echo many of the comments you have already heard and don't need to repeat them, our ratepayers, many of you, get a bill that has water and sewer costs on it, not divided out. So the full range of costs is what our ratepayers face.

But three very specific points: Number one, in order to negotiate the opening of our consent decree, I have already spent \$2 million in the preparation and the analysis and the background work necessary to get to the negotiating table. That is a very difficult dollar figure to cover, and I will be in trouble with my board if we don't actually succeed.

But there are many jurisdictions that do not have the capability even to get to the negotiating table because of the level of research and analysis that is necessary to evaluate and compare, and to assess all these various programs and requirements and put them in a risk-based system. That is a detail-intensive and research-intensive effort.

So one issue I think is very significant and I know funding is extremely very difficult, is pilot funding for those jurisdictions, particularly with financial limitations, to avail themselves of the ability to even get to the negotiating table.

Second is the benefit of permits. Permits last for 5 years, consent decrees go for 20 to 25 years. There is no question that the consent decree enables a longer period of time, but these are in a context that it is a far more rigid negotiation because it is within a violation and an enforcement context.

Expanding the use of permitting compliance schedules beyond a 3- or 5-year span to match what you could do in an enforcement context would enable far more flexibility in this concept, and third is to go back to affordability. The affordability challenge to the people who are footing the bill is very significant, and we think that the 2 percent is—I am not even sure where it comes from, but I am not sure it is relevant in assessing the affordability of these kinds of changes.

I do want to emphasize that the integrated planning framework is a very strong step in the right direction, and we have seen a much better negotiating climate with EPA today, but it is expensive and time consuming in order to get to the table, and I think many communities need assistance on that score. Thank you very much.

Mr. GIBBS. I can tell you are on the frontlines, your passion.

Mr. Vicory, welcome and the floor is yours.

Mr. VICORY. Thank you very much. Good morning, Chairman Gibbs, and subcommittee members.

George Hawkins is always a hard act to follow, obviously, and I am pleased actually in my comments to fundamentally reiterate a lot of the testimony that you have heard here this morning. Actually, my function within WEF is I am currently vice chairman of the Government Affairs Committee, and I need to note that this past January, I wrapped up a 24-year career as executive director and chief engineer of the Ohio River Valley Water Sanitation Commission, ORSANCO, an interstate compact agency to abate interstate water pollution in the Ohio Valley.

But on behalf of WEF's 36,000 individual professionals working in water quality, we are certainly pleased to be here this morning. The local governments, and I think in your opening comments, and I think you have acknowledged this, have made tremendous investments to improve water quality and achieve Clean Water Act com-

pliance over the last 40 years, and there has been remarkable success.

This is about an essential public service that is fundamental, as we all know, to public health and maintaining our quality of life, but we are all struggling in this economy, and as such, it is imperative that local governments invest their limited resources wisely to achieve the most significant environmental and public health benefits.

And that is what this framework, we believe, seems to speak to, and we are very supportive of it. We have been engaged with EPA throughout the development of the framework, and we considered it a much-needed first step to provide greater flexibility to local governments to balance the need for investments in asset management and aging infrastructure with other water-related requirements at a pace that is sustainable and affordable. Again, themes you have heard already this morning.

Common sense works. This seems to be common sense. Planning this locally driven, flexible and voluntary is, we believe, the way to go, and an approach that encourages innovation, such as green infrastructure, obviously is really where the future needs to be.

But as we have heard in several testimonies this morning, we have a policy, we really don't have implementation, and there are a lot of questions about that.

WEF offers six main thought points, if you will, on implementation. Regarding adaptive management flexible longer-term schedules, we did recommend, WEF recommended that adaptive management principles be incorporated in the framework. We have that. We need to assure that it is actually implemented, and that is implemented through allowing permits, and to the extent we have enforcement of those on the books to be reopened. If circumstances or technologies change to provide the opportunity to identify, evaluate and select new projects, incorporate innovative solutions and make changes to ongoing projects and implementation schedules.

Technology is moving like I have never seen it in my lifetime, so we need to find ways to get these emerging technologies out on the street to the benefit of all of us. Supporting States and making the integrated planning process available to all is an important thing. There are obstacles within EPA's policy. The Agency needs to zero in on those and address them to free up this new approach that we are all supporting here this morning.

We need to assure that utilities are not turned away that want to pursue this. George spoke quite well to the resources he has to deal with things. A lot of communities do not have the resources they have. And, really, this speaks to the idea of some level of reasonable funding to prompt and stimulate, if you will, the implementation of these approaches and to demonstrate that the principles here indeed work, and then I think you will see a lot more communities jumping forward, if you will, and wanting to go with the integrated planning approach.

We have heard a lot also about enforcement versus permitting. We are very clear, I believe, as an association, a federation, that regulators need to use their discretion to utilize a nonjudicial implementation approach. Permits provide the flexibility. We can

write over the permit renewal process, long-term plans in those permits and, again, enforcement really needs to be the last resort.

Imposition of fines and penalties, if we cannot eliminate them, we need to minimize them. The reality is that enforcement creates a counterproductive stigma at a time when local governments need public support to raise the rates in order to do what they need to do.

And the importance, I think, spoken by the Mayor of Lima, that local governments need to be treated as partners, almost as clients, if you will, versus polluters, if you will, or even, as I have heard early this morning, criminals.

We would agree the permit does not—excuse me, the integrated planning process does not go far enough to address the affordability issue facing local governments. We certainly want to confirm that thought. And the need to consider, for EPA to consider other economic indicators other than the 2 percent median household income. I think you have heard here this morning that that analysis approach really is not truly the right economic analysis approach for lower income communities.

You know, at the end of the day, this is about moving an environmental needle. Water quality improvements must be the gauge of success, not necessarily a reduction of flow volume, this is about are we achieving environmental improvements, are we moving that needle, and that is really the cost-benefit approach that we need to pursue, and I think that the integrated planning process really begins finally to speak to that, to allow communities to have that flexibility.

Innovation, and there is a lot of talk about innovation, innovation also is risk. And when you take innovation and risk, some efforts will be successful, some will be spectacularly successful, and some will probably not be successful. But not supporting innovation, I think, is probably a least desirable outcome than supporting innovation and creating the progress that innovation provides and we need to be open, if you will, to try and experiment and understand that if something didn't quite work, then let's not necessarily move to an enforcement mode, because enforcement mode basically shuts down all the opportunities that we have before us.

WEF stands ready to work with our members, to help support the implementation of this framework. We will pursue educational and opportunities, including considering the needs of small and medium-sized communities who may benefit from the integrated planning process. So my conclusion, as we embark, as we all embark on the next 40 years of the Clean Water Act, let us strive to use this framework as a springboard for collaboration and partnership to find the best, most innovative and cost-effective solutions to achieve water quality improvement without saddling our communities with unnecessary debt and imposing a financial burden that is unsustainable.

I look at this as an amazing opportunity to literally shift our paradigm in how we do things. This is an opportunity that I hope we cannot—we all cannot, we just cannot afford, in my view, for their to really fail and not be successful. We commend EPA for listening to local governments, and we look forward to working with all

stakeholders on the implementation to realize our shared goals of protecting human health and improving water quality.

I want to thank you for the opportunity to testify, and some of us are wearing this little button here that has a very simple saying, a campaign sponsored by WEF, and it says "Water's Worth It," water is worth it.

Thank you for your time.

Mr. GIBBS. Thank you, thank you for all the testimony. It has been great and very formative.

I will start off the questions with just a couple of thoughts. It seems like there is a common theme. One is you need flexibility, affordability issue, issue versus enforcement versus permitting, the consent decrees. You could go on, but integrated plans, and the exclusion, it seems like I am hearing that it should be all-inclusive, not, you know, groundwater, drinking water.

And I guess my first question, I will just throw it out to the panel, we talk about the affordability since that seems to be the major concern, the 2 percent. Do you see the EPA addressing each project, or, you know, if it is wastewater, combined sewer, whatever, it is separate silos instead of—it seems like if you have an integrated plan you have to got to have it all together, so that would affect the affordability, I think, formula.

Does anybody want to expound on that, where you see the EPA, the folks, how they address that versus trying to do it integrated? Does anybody want to take a stab at it?

Mr. BERGER. Mr. Chairman, certainly the process, up till now, has been very much a siloed approach, and I think the hope, the promise of integrated planning has been that that would be cured by an overall look at the total costs of compliance and the priority setting within that.

I would argue at the same time that unless there is a budget cap, you are not really setting priorities. What you are doing is merely scheduling. Priorities get set when you can decide what it is you can fund and what you cannot.

My community, we have gone from 530 employees to 350. I no longer have a secretary, and I no longer have a chief of staff. That is setting priorities, because we have decided to fund police officers and firemen. The same thing needs to happen, it seems to me, within integrated planning. It can't just be a matter of all the obligations simply being lined up on a schedule and lower priorities still have to be addressed. There truly has to be a containment of costs.

Once you have established a cost cap, once you have been able to define what it is that can be afforded with local, limited resources, then priority setting has a meaning.

I also want to, I guess, contrast what is, I think, the progressive taxation methodology that all of us in local governments in Ohio, where we have an income tax or States or Federal Governments, essentially is based upon an ability to pay.

When we set rates, however, that has nothing to do with the ability to pay. A rich person pays the same amount for a drink of water as a poor person does. A rich person flushes the toilet, and the service and service user fee that is charged for that service is the same as a poor household.

So when these costs associated with the mandates are levied across the board, the fact is, is that our rate base and rules that govern our ability to set those rates, in fact, impose enormous devastating charges on the poor.

Mr. GIBBS. OK.

Mr. BERGER. It also becomes an enormous problem for economic development as well.

Mr. PORTUNE. Mr. Chairman.

Mr. GIBBS. Yes. Go ahead.

Mr. PORTUNE. I would like to echo the Mayor's comments and interject an additional thought with respect to the affordability question. But clearly, what is missing is balance in the discussion, that the 2 percent, the affordability issue, all of us in urban issues struggle with that greatly because we all are losing the middle class, the middle class is going by the wayside and we have the very rich and the very poor.

And the 2 percent median income approach does not take into consideration the undue burden that is placed on a growing majority of our residents in urban communities, number one.

Number two, there has got to be a way to interject prioritization into this. I referenced it as an issue of balance, where is the balance? When my budget has gone down for all county services by over 30 percent in the last 5 years because of declining revenues, when I am laying off 1,500 individuals, when we have cut human services by 50 percent with a 40-percent increase in demand, but yet, we have to raise rates to do everything in terms of Clean Water Act compliance from the number one priority to the least priority, when I am spending \$200 million total on all county operations, and \$380 million on my sewer-related obligations, there is no balance. And there has got to be some balance interjected into the equation.

The third issue, quickly, and that is that the median income issue, the 2 percent, is also driving third-party lawsuits because there is a focus on that as driving what communities can or can't do without regard to the legitimate reality of affordability. And so as long as that is in the equation it, the unintended consequence is that it is serving as fuel on the fire of third-party lawsuits.

Mr. GIBBS. My time is up. I just want a quick follow up on this. When you go over the 2 percent threshold, does the EPA back off on the, you know, on the enforcement or going after you, or are you saying that also opens up a third-party lawsuit issue? Can you expound a little bit?

Mr. PORTUNE. In our case, in Hamilton County, we had an approved consent decree in 2004. And then we were sued by the Sierra Club.

And part what we were sued over was the question that we weren't doing enough quickly enough, and the affordability issue was front and center, part of their argument of why they intervened in our federally approved consent decree. That then resulted in a revised consent decree.

But it was stressing and focusing on the 2 percent and whether we were meeting that across the board without regard to how many individuals in the city of Cincinnati, for example, lived in poverty, how many people were going over that in terms of annual

income as opposed to a median income, it was a major determiner in the challenges that were lodged against our consent decree by that third party.

Mr. GIBBS. Mr. Bishop. Thank you.

Mr. BISHOP. Thank you very much, Mr. Chairman. Mr. Chairman, I will frame the issue in a particular way, I am going to frame it in a way that I think is very similar.

It seems to me that we have a huge problem and we have two principal solutions, not the only solution, but two principal solutions. And one is to adopt a process or a framework that emphasizes integrated planning, that emphasizes flexibility, that emphasizes prioritization. And I think there is near unanimity among the panel, not perhaps total unanimity, that the EPA guidelines set forth in the memorandum of June 5 represents a very good step in the right direction.

I don't think any reasonable person would argue that this is all we need to do or that the framework is perfect, but that it does represent a good first step and that we now have, in the framework or the process is now 5 weeks old or 6 weeks old, we now have, I think, the opportunity to see it put in place, see how it evolves and, you know, it is incumbent on this committee and incumbent on the EPA and incumbent on all of the stakeholders to assess whether or not it is having its intended outcomes, and then we all need to be prepared, I think, to respond in appropriate ways, if it is working, and certainly if it isn't working.

A second piece is the financing, and I think that there is, again, unanimity among the panel that the financing piece of it is crucial, and that the framework piece can only take us so far.

Now, the framework piece represents a new approach. We also need a new approach to financing, and I—you know, I talked in my opening statement about our bill, H.R. 3145. And I will note, I know that there is a lot of Ohio guys out here, and I will note that my principal Republican cosponsor is Congressman LaTourette of Ohio. This is a bipartisan bill that I really think has some promise.

Again, is it the only answer? No, it does not. But it does have some real promise. And so I am hopeful in hopeful that in the same way that the EPA has undertaken a new approach, that the Congress will now undertake a new approach and exercise a suite of options that such is what my bill provides. But, Mr. Berger, you raised the issue of funding and particularly the issue of more grant funding.

I think it is instructive that we just look at the last couple of years of where this Congress has gone. Fiscal year 2009 we enacted \$4.7 billion in funding for the SRF, \$4.7 billion; fiscal year 2010 it dropped to \$2.1 billion; fiscal year 2011 it dropped to \$1.5 billion; fiscal year 2012 it dropped to \$1.4 billion; and the House Appropriations Committee passed the appropriations bill for the Interior and the Environment, and it drops that number to \$690 million.

So we are going in the wrong direction here, and we are exacerbating a problem that all of you on the ground are trying to resolve. And so as we go forward with the, I mean, the mantra here is cut spending, the mantra here is we can't afford it, the mantra here is that we can't possibly increase revenue.

That drop, from \$4.7 billion to \$690 million, that is the manifestation of those mantras. And so at some point, we are going to need voices of reason to say we have got some real problems in this country, and we are going to have to start to address them.

Now with that, I will get off my soap box and I want to ask Mr. Hawkins, NACWA put out a press release back in '09 in which it sort of, it spoke positively about a GAO report that suggested that a Clean Water Trust Fund was something that we should be doing, and it put out some potential means of funding, a Clean Water Trust Fund. And in the NACWA press release it said that fees potentially, underline the word "potentially," could be placed on such things as bottled beverages, flushable products, pesticides, agricultural chemicals and pharmaceuticals.

Would you, representing NACWA, not so much the city of Washington, DC, would you comment on the relative desirability or the lack thereof of those potential funding sources?

Mr. HAWKINS. Sure, and I will get to you, on the comment you made on funding, I think there is a bridge between the two points you made, when you asked the question of how integrated planning can help with EPA working in silos, I have been an EPA enforcement lawyer and have ran a State agency.

Remember that this policy only comes into to play when the municipality or the authority comes forward. So it doesn't mean EPA is issuing anything differently unless a municipality is prepared to do the background work to come forward with the integrated plan.

And what I can tell you is all that we are seeking to do with DC Water is to open up one of them, which is the long-term control plan for combined sewers, and that is what has cost us \$2 million in prep work to be able to prepare the information and the analysis needed.

The cost, just to get to the table to see whether the integrated—you start comparing a combined sewer overflow challenge to a sanitary sewer overflow issue, to an MS-4, comparing the health risk to them and the engineering costs, it is an enormously complex matrix that I am glad EPA has opened the door to. But separate from the big one, we like H.R. 3145, I applaud the proposal, but there is somewhere in between that most places aren't even going to be able to get to the table on integrated planning because of the costs—just to get there, and do the analysis.

On your second question on costs, on particular products, it is like a toll that if you use the road, you pay the cost to help update the road. As you know, in the city, we have a 5-cent cost on every plastic bag that has been used, a very similar concept. We raise that money and use it to reduce nonpoint source pollution along the Anacostia.

What we found is that plastic bag use has dropped precipitously, because people are making different choices. It is a classic economic principle. Put the cost on that item which you are handling in the process, you have internalized that cost, classic economics, then the cost is borne in the product to the consumer. Likely the consumer will use less of it because they will start making different decisions, and you had a revenue stream in order to help pay for the cleaning of that product when it is used.

So I personally favor it. I would have to go back and connect with NACWA to make sure that our thinking hasn't changed, but that the concept of intaking the cost of handling a waste stream and putting it inside the cost to the consumer, both will drive better consumer choices and raise revenue to be able to clean up those issues when they come to our facility.

Mr. BISHOP. Thank you very much. My time has expired, Mr. Speaker.

Mr. GIBBS. Mr. Duncan.

Mr. BERGER. Mr. Chairman, Mr. Chairman, a comment. The U.S. Conference of Mayors adopted in 2011 unanimously, Resolution 43, which pertains to CSO and SSO policy, and it was a very simple kind of assertion. Either provide 50 percent of the funding in the form of grants for our obligations at the local level or give us relief. Loans don't help us. Loans are debt that have to be paid back.

I can borrow all kinds of money at incredible rates right now, but I can't pay for it.

So SRF and all of those authorizations, they aren't yet appropriations, don't help us if it is just a debt to be paid by the rest of my community forever.

Either it is relief or cash. That is what we need, and thus, it is a pretty simple choice. If these are unfunded mandates, and what you are hearing from local communities and from districts all across the country is we can't do it, we don't have printing presses like the Federal Government, the local pocketbook is very finite.

So if the Congress has passed these as mandates and orders for us to execute, then you must join us to pay for it. If the cash isn't there, or the political will isn't there, then relief must come, and it has to come soon.

Mr. GIBBS. Yes. I think we all understand that, and I think right now we are trying to maybe figure out some relief by having the integrated permit process and maybe helping the cost side to streamline some things, so but you are right, we have huge infrastructure issues that we are facing here and we are trying to address that, so I appreciate your comments. Mr. Duncan.

Mr. DUNCAN. Thank you, Mr. Chairman. This is a very important hearing, and I was present for the earlier hearing when we heard from the mayor of Omaha, and we heard from Indianapolis, as Mayor Berger said, we have heard from cities and counties all over the country saying they can't afford this, and that was a very eloquent, articulate plea you just made, Mayor Berger.

And it seems to me this process is being controlled or governed by people who I am sure don't think of themselves as extremists or fanatics, but they are sure not being reasonable, and they are going to end up hurting a lot of poor and lower income and working people in the process.

Commissioner Portune said that his area is losing the middle class. Three of my dad's sisters moved to Cincinnati when they were young from Tennessee. I probably had as many relatives in Ohio at one point as I had in Tennessee.

But I read a lot of this testimony, and the Mayor of Peoria submitted this in writing, he said, EPA is still asking the citizens of Peoria to spend to the limits of affordability, even if spending more money will not result in meaningful water quality improvements.

As noted above, the EPA wants Peoria to eliminate as many CSOs as it can afford to eliminate, even though the additional CSOs eliminated by going from the city's \$90 million plan to EPA's suggested plan that we estimate will cost almost \$500 million, will not result in any meaningful water quality improvements because water quality standards would be met fully under the city's plan.

If Peoria has to spend more than five times as much as they can afford and they were planning to spend, then the citizens' rates are going to have to go up by five times. And a lot of people can't afford that, and a lot of cities can't afford it. I heard Mayor Berger talk about the people he has already laid off going from, what, 530 to 350—what was it?

Mr. BERGER. 350.

Mr. DUNCAN. I am sure that was a painful thing for you to will center to lay off all those people. And just last week in Tennessee, the Chattanooga, the big Chattanooga newspaper, the Times Free Press had this story, it starts off, "The U.S. Environmental Protection Agency and the U.S. Department of Justice are expected to file a consent decree Tuesday ordering Chattanooga to spend hundreds of millions of dollars on repairs to the city's sewer system," and this is in spite of, they had already spent \$100 million a few years earlier.

The city of Knoxville, where I am from, had spent mega millions through the 1990s and the early 2000s on our system there. Then in 2005, we had to enter into a \$530 million consent decree, and I am told that the Conference of Mayors, I am told that the EPA is foot dragging about the total cost estimate, but that the Conference of Mayors says this is going to cost hundreds of billions to cities all across this country that there is something like 100 or over 100 cities under consent decrees at this time.

And I heard Mr. Hawkins talk about, he says in his testimony, the regulations continue to expand, so too have enforcement actions, and he says, costing individual communities billions of dollars often to meet a single CWA requirement. Recently, municipal clean water agencies were also hit with a stringent reinterpretation of the Clean Air Act, which, if not overturned, will force enormous costs on communities, and this is all coming at a time when the cities are in trouble anyway economically, because of the economy and because of various other factors.

And, yet, everybody on this panel, and everybody on the earlier panel, when we had this hearing a few months ago, everybody wants clean water. They want it to be as clean as possible. But we have to have a little—we need to have a little balance and common sense in here. And we can't, we can't please, we can never please the fanatics and the radicals and the extremists. But we have got to try to have a little moderation and a little reasonableness in regard to these requirements, or we are going to really hurt cities and counties all over this country.

And, as I have said at the start, we are especially going to hurt a lot of poor and lower income and working people. Maybe some of these officials who are cramming all this stuff down, as maybe with their higher incomes, they can afford this and it won't hurt them, but it is sure going to hurt a lot of people across this country if

we don't get a little moderation and balance in what we are attempting to do.

Thank you, Mr. Chairman.

Mr. GIBBS. Thank you. Ms. Eleanor Holmes Norton.

Ms. NORTON. Thank you, again, Mr. Chairman. Mr. Hawkins, I have to thank you again for making sewers exciting enough to draw the general interest of the public.

And I must say, I found your summary and your vivid explanation important, and you come, of course, from the District of Columbia. But in many ways, what you describe is emblematic of what is facing, as my good friend on the other side says, small towns and big cities like DC alike.

Now, you know, when they call the cops on you, when you announce a 50-percent increase, I know you feel you are caught between a rock and a hard place. You mentioned the diminishing returns on investment for nutrient removal, and you made us understand why.

On the other hand, look where you are located. You are located not only in the Nation's Capital, but in the region of the iconic Chesapeake Bay. And part of that mandate has to do with improving the Bay's water quality. You said, I think you said that the District was the only part of the Bay region that met its goals, the Chesapeake Bay goals. Is that true?

Mr. HAWKINS. That is correct, essentially because the only major contributor to nutrients to the Chesapeake Bay from the District is Blue Plains, and Blue Plains met its goal. So there are other facilities that have met their goals, but for whole States that have lots of sources of pollutants, they have not as a total.

Ms. NORTON. I see. I see. Now, what we are dealing with here is essentially are competing priorities, and the public wants both, and the public never wants the kinds of costs you are getting now.

Do you see any way to continue along the road you are going without placing an increasingly oppressive burden on ratepayers? And if you envision that the burden that you have encountered, you say in only 4 years, a 50-percent increase, do you envision that kind of increase in the future, and if you envision anything like it, I would like you to suggest what EPA, consistent with its priority as well, and, remember, I have set this question up in light of competing priorities, what EPA can do.

I understand, for example, that for districts like ours, which have a consent decree, they have increased, I don't know if they have done this for the District of Columbia, they are either considering or have decreased the number of years that a jurisdiction have. Would that have an effect if it is increased from 20 to 25 years. Has that happened?

What else could happen when you know that the Congress is not about to come to the rescue, your taxpayers can't afford to come to the rescue, and yet there are priorities having to do with clean water and with your rivers and streams.

Given the way that you are locked in, and the way the EPA may feel it is locked in by some of these consent decrees, what do you suggest could be done to at least bring, lower the rate of increase, of these increases?

Mr. HAWKINS. It is certainly the question of the day. There is no doubt we have done at DC Water a 20-year projection of budgets and rates. Obviously we could only project that part into the future with the requirements that we can envision today, and the history of the system is that there are many new requirements that come in over time.

Ms. NORTON. But is that based on your consent decree, 20-year time limit?

Mr. HAWKINS. No, we just did this because we wanted to have a financial picture for the enterprise. We do 10 years every year, a 10-year rolling financial plan. We extended it out 20 years just because I wanted to see a picture, and we see significant rate increases every single year for 20 years, not always double digit, but close to double digit that will yield far in advance of inflation so your initial part of your question is do we see these increases as far as we can plan into the future, we see increases faster than the rate of inflation.

Ms. NORTON. OK, if that is unsustainable, given the constraints on all concerned, should we increase the number of years to comply, we know what that will do, of course, to nutrients on the Chesapeake Bay and the rest of it, but something has got to give. And what kinds of relief do you see as practical?

Mr. HAWKINS. I think there are three kinds of relief. One is, the extension as you said, EPA and Department of Justice has been forthcoming. There is Atlanta, and Seattle, and Philadelphia, there have been new approaches taken to these solutions. One of the challenges is opening up existing consent decrees, where flexibility has been most possible is where there isn't yet a consent decree in place yet, so you negotiated adaptive management from the beginning. It seems far harder for communities that stepped up sooner and more quickly to reopen those decisions and incorporate modified compliance schedules, but I think that part of the equation is a longer period of time to conduct the work so that financial components can be extended on the pocketbook.

A second question is how you get equity on the sources of pollutants. You are correct that we are reducing the nutrients at Blue Plains. The challenge is that over time, the percentage of nutrients going into the Chesapeake Bay from the big urban wastewater treatment plants has declined dramatically because we have been successful. We know that if we—

Ms. NORTON. And somehow that ought to be rewarded.

Mr. HAWKINS. And the way it is rewarded, and we are proud of it, and we have stepped forward and every community at this table has done a lot to protect the waters of the system. But what we know if we decrease nutrients from Blue Plains to zero, the Chesapeake Bay wouldn't be remarkably cleaned up because we are no longer the major source.

The major sources are the nonpoint source, the runoff from other sources way out in the hinterlands of the Chesapeake Bay. So I think one of the challenges that we faced is that the Clean Water Act wasn't fundamentally written with those sources in mind.

I grew up in Ohio, in Cleveland. I visited the Cuyahoga River in 1969 and looked at it in the year where it burned for a week, so I know the problem that we were trying to resolve. I wrote a letter

to President Nixon that year saying that, as did everyone in my class, that we had to clean up that problem. It should not stand.

The law was written to solve pollutants from point sources, whether industry or municipal treatment facilities. It is very unclear, and EPA is struggling with it, but to get parallel reductions from what are now the prevailing sources of pollutants for nutrients into the water bodies is a much more difficult challenge. And if you look at where the money is being spent, it is being spent disproportionately on urban populations or those that send waste to a treatment facility, rather than those that flow directly to the river.

Ms. NORTON. But you feel mandated to continue to invest in the technology that goes after smaller and smaller increments?

Mr. HAWKINS. We are absolutely mandated to do that. We will meet those requirements. The hard core reality of every system at this table is that we meet the mandates where we don't spend the money on that trunk line on Florida Avenue, which causes the flooding in our city, which is what the citizens really are desperate—

Ms. NORTON. Mr. Chairman, could just ask one more question. I would like to know if you wanted to do a pilot on green technology, you are now spending billions of dollars on these huge tunnels that is 20th-century technology. We understand why it is being used, tests that it is approved. Do you believe that green technology would significantly lower the increases you are encountering and have you any evidence to support that notion?

Mr. HAWKINS. I am not yet convinced. The reason we are seeking to open our consent decree to do a pilot in the District is we are not certain about what the costs are likely to be. We are not saying to any of the stakeholders that we are likely to save a lot of money if we use low-impact development, because it is quite expensive to be doing a dispersed low-impact system that is broad enough to contain that much stormwater. We do think, however, that the multiple benefits that come from the expenditure, when you are doing work that affects the surface of the city, the city streets, the air quality, the stormwater retention that otherwise causes the direct flooding, the jobs, the long-term jobs, you cannot outsource jobs that have to be maintained for a city street.

The job creation in the city, the multiple benefits that come from a low-impact development far exceed those of the tunnel. We are not certain yet that it actually will save money. That is why we want to do the pilot to get in hand measurable costs that we can then model to a full-scale implementation.

Ms. NORTON. Thank you very much.

Mr. GIBBS. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chairman, very interesting conversations. I also come from a small city, past mayor, so I understand some of the local frustrations. And I also sat on a sanitation board that dealt with the water recycling and the landfills and the utilization of new technology to be able to cut the costs down of the delivery of service to the ratepayers.

Mr. Becker, in the West, we do have a unique set of water challenges, and recent reports have shown our water supply is dimin-

ishing while the demand is increasing. Population continues to increase, at least in California.

How will you, as Mayor of Salt Lake City, are reintegrating reuse and recycling into your city's water planning efforts?

Mr. BECKER. Thank you. Increasingly in our city and in our region we are tapping every conceivable means that we can to use water efficiently.

Mrs. NAPOLITANO. How? Specifics.

Mr. BECKER. We are doing a whole variety of things. Part of it is institutional. Part of it is us coordinating our water, part of it using our groundwater supply. But we know there are limits there. As we are seeing climate change, we are having to adapt in our watersheds to our water supply system.

We are increasingly—we have changed our rate structure. We have gone to a declining block, we have gone to an inverted block system where the more water you use now, the more water you pay for. We have reduced our water use in the last 5 years by more than 20 percent in Salt Lake City just by changing our rate structure, by educating our community, and by offering incentives for people to change their landscaping and their water use and irrigation habits as well.

So we find that we can do a lot to improve, certainly, our water systems. But as has been mentioned here, this is a problem that we face really for all of us.

Mrs. NAPOLITANO. Especially Western States.

Mr. BECKER. Certainly in the Western States, where as you know we are the second most arid State, we rely so heavily on using our water well, and we are intent on continuing to do that and improve our efficiencies. But we really need congressional action as well. This just can't happen by us working locally and trying to work with our EPA.

Mrs. NAPOLITANO. And your water smart investments.

Mr. BECKER. I am sorry.

Mrs. NAPOLITANO. And your water smart investments?

Mr. BECKER. Continually. Whether it is in simple things like metering, whether it is in our irrigation systems within our city, for our parks, we are continually investing and making major investments on water issues.

Mrs. NAPOLITANO. One of the things you mentioned to us is climate change, and that was a big bugaboo word around here. It is happening, and I think many States are beginning to wonder how they are going to be able to deal with the next cycle of drought. And then, of course, rains and floods and all that will other good stuff.

What about groundwater, your aquifers? What is the status and have you worked with USGS? And how are things being the able to store it, because as the drought continues, the heat that is going through the United States is evaporating a lot of the surface water. Have you looked at, are you looking at being able to identify your aquifers and what the status is and be able to recharge?

Mr. BECKER. We have. Thank you. Groundwater is essential for us, we have a very good sense of our groundwater system in our valley, coming out of our mountains and our recharge areas, and protecting those recharge areas is essential, making sure we don't

tap too much of our groundwater is essential too, because the Great Salt Lake will start to move towards and interfere with the water we can use for potable water.

So we know how much water we have. We are tapping it extensively, but if we overtap it, we are going to face dire consequences in terms of the water supply.

Mrs. NAPOLITANO. Overdrafting is a problem, isn't it?

Mr. Baker, same question but the broader statewide perspective, and can you discuss how in the area west in the State of Utah you are dealing with decreased water availability and increasing demand, and how will integrated planning help your efforts in Utah?

Mr. BAKER. Well, I think one thing we need to do is integrate this wet weather discussion that we are having for the NPDES permits, with groundwater, which is not a federally permitted authority, and with drinking water.

When I get back to my office tomorrow I will have sitting on my desk the first integrated plan to be submitted by a community in Utah. It is not a wastewater treatment plant issue, it is not a wet weather issue, but it is a water quality issue resulting from water that is coming out of a mine that is heavily laden with metals, and those metals are causing problems, according to the TMDL we did. This really becomes a water quality issue, so we need to have a broader perspective of this. It is not wet weather, it is not wastewater treatment plants, it is not just combined sewer, but it is water quality.

Mrs. NAPOLITANO. Which mine might that be, sir?

Mr. BAKER. Pardon me.

Mrs. NAPOLITANO. Which mine might that be?

Mr. BAKER. Well, it is outside of Park City, and so we are going to need to figure out how to deal with this. And just to answer another question that Congresswoman Norton had, well, how do we do this?

One thing, we struggle with nutrients in Utah and we don't struggle with wet weather. Mayor Becker mentioned Utah is the second driest State in the country. Wet weather is a blessing, not a curse. But this nutrient issue is ubiquitous across the country. What we are planning on doing with our nutrient issue, and this will help, I think, address some of the cost issues, is we are not going to go full throttle from the very beginning.

We are going to do an incremental approach and have an adaptive management approach that will allow us to gauge the success and benefits of nutrient removal in a cost-effective way. The Jordan River bisects Mayor Becker's city, runs the lengths of the city. Most of the wastewater generated in the State of Utah flows down that river and ultimately into the Great Salt Lake.

For a little over a dollar a month per user, we will be able to eliminate two-thirds of the phosphorus loading that goes into that river and ultimately to the Great Salt Lake that is causing problems. And then we will take a step back and see if that is good enough, or if we need to go to the next step.

So this adaptive management approach I think is going to be a key element in making integrated planning successful, and without breaking the bank.

Mrs. NAPOLITANO. One of the questions that was answered by Mr. Hawkins deals with the source, the prevailing source. We found in California that a lot of this comes from industry, from agriculture, that is contaminating some of our water. California gets three sources of water, southern California. Northern California provides us with the Bay Delta, which right now is a big issue in California. And then one is the Colorado River and the other is groundwater. And somehow we are trying to wean ourselves off of imported water by doing more recycling, conservation, education and desalination.

Now, any of those areas we need to be able to get assistance, because as you have pointed out, many of the cities are too small to be able to know how to navigate all the paperwork that is necessary and be able to be successful without hiring attorneys, consultants and things that they cannot afford. So somehow we need to be able to understand that for the smaller communities. However, the larger communities also have a problem. So somehow we need to be able to take all of this into consideration.

However, I have not heard anybody say anything about what about our Native Americans? What about their water, which sometimes they truck it in to be able to provide drinking water for the reservations. Those are issues that sometimes we don't talk about, and I think we need to be able to concern ourselves with all Americans, not just those that fall in the communities that are incorporated but all the unincorporated and tribal areas.

With that, Mr. Chair, I yield back and I hope to be able to get some answers later on. Thank you.

Mr. GIBBS. Representative Edwards, do you have any questions?

Ms. EDWARDS. Thank you, Mr. Chairman, and thank you to all of our witnesses.

I have just a couple of questions. I think there is no question we all know all across the country that we have huge infrastructure needs, we have no money, and we are running the risk—I live in Maryland, and maybe I can drink some clean water there, but I could go someplace else and it not be clean. And I don't think that any of us want to be in that place. We have all traveled to countries where you can drink water in one city, but you better make sure to take your bottled water in another city. That is not the United States and we don't want that.

The problem, at least one of the challenges, is how do you finance all of the infrastructure? When you start telling customers that we have infrastructure that dates back to the beginning of the last century, and we have got to change that and it is going to cost billions of dollars, and at the end of the day, they know at least some of that, most of it, probably all of it, is going to have to come out of their pockets, no one wants to do that.

The same thing happens, we just had a major storm here in the metropolitan area, and we know that we have deep needs for electrical infrastructure, and nobody wants to pay for that because it costs a lot of money. The Federal Government, I think, has to be a real partner there, but that is still taxpayer money.

We heard from a couple of our witnesses, and I can understand this, that at a local level, because of those huge financial constraints, that it also means that some of our small cities, and I

have about 20-some of them, little municipalities that also have infrastructure needs, and they can't afford it.

So I wonder if any of you can talk about the integrated permitting process as a way to facilitate consideration of innovative financial approaches to financing the infrastructure. I would note that in a recent analysis of green water infrastructure in Philadelphia, it actually showed that a stormwater fee that was combined with a credit for managing water onsite could yield about \$400 million in private investment opportunity.

So, if you have some ideas about it, I would appreciate your sharing them with the committee.

Mr. BECKER. Mr. Chairman, if I may, members of the committee and Congresswoman Edwards, there is a real practical solution that can help us get there within the integrated planning process.

Our coalition has proposed a 15- to 20-community pilot demonstration project approach on an annual basis for the next 5 years within the context of the integrated planning framework, where EPA is leading the process.

The showcase community approach that exists today places all of the financial burden of developing new ideas, of seeing if the alternative approaches work, in determining whether creative approaches to this solution, financial, capital, infrastructure, green infrastructure, green build, otherwise will work. The burden is still all on the local communities to take the risk, financially and otherwise. And if what we choose doesn't work, not only are we out the money, but we are still facing mandates and we are still facing enforcement and the like.

We need EPA to lead on this process. We want EPA to lead. And I will admit that there has been a sea change in the approach in our own interaction with the EPA and the like. But EPA's approach to showcase communities is still saying let's look at the examples where local communities have found something that has worked, and let's showcase that. Well, you still have to have enough money and enough resources and access to expertise and time to be able to make that work, and the majority of the communities, and the last count I heard was there were 781 communities nationwide that are facing this issue at one level or another, the vast majority don't have the ability to do that.

We need EPA to lead in partnering with us, to bring their expertise to the table, to help show local communities what the answers are, or to allow us to explore alternatives without risk of loss or further risk of enforcement for having chosen the wrong approach if it turns out that it doesn't work. We need to develop these alternatives over the next 5 years to make them work.

Ms. EDWARDS. I appreciate that. Let me just reclaim my time because I would like to hear a response from Mr. Hawkins and your view about what it is that we could do to use some innovation.

Mr. HAWKINS. On the financing side, we do, in fact, in the District, have an impervious area charge like Philadelphia. One of the other things we have done in the District is create a sustainable energy utility, which is something you could also perhaps do on the water side, which it does need an upfront investment to capitalize the utility. Then you make investments, particularly on the drinking water side, where then you can save money on reduced con-

sumption. The saved money pays back the utility to help fund the next project. And if the private sector brings in half, so you do sharing, then the dollars that you put into the utility, the sustainable utility, whether it is water or energy, can be sustained and grow.

The impervious area charge is the largest and fastest growing—not the largest, but the fastest growing part of our bill by far, because it is exclusively covering the \$2.6 billion project. We haven't created it yet like Philadelphia, but creating an incentive that if you do more to manage stormwater on your property, you pay less of an impervious charge. That is another way where there is an incentive for someone to reduce their bill by doing something that actually reduces the stormwater and can cleanse it at the same time. So both of those are innovative approaches that do work.

Ms. EDWARDS. Thank you, Mr. Chairman.

Mr. GIBBS. Thank you. I want to thank the first panel. It was excellent testimony. I want to move on to the second panel, because I think that is where we really need to have some focus. Hopefully we will be done before votes at 1 o'clock. Thank you again for taking your time to come and give this very important testimony.

At this time our second panelists can come up to the table. Welcome to the committee. First off I want to thank you for being here for the past 2 hours and listening to the first testimony, because hopefully it was beneficial to you in your role and your responsibilities as you administer the Clean Water Act.

Our second panel, we have Ms. Nancy Stoner. She is the acting assistant administrator for the Office of Water for the United States Environmental Protection Agency, and Ms. Cynthia Giles, the assistant administrator for the Office of Enforcement and Compliance of the United States EPA.

TESTIMONY OF NANCY K. STONER, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF WATER, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; AND CYNTHIA GILES, ASSISTANT ADMINISTRATOR, OFFICE OF ENFORCEMENT AND COMPLIANCE ASSURANCE, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Mr. GIBBS. Welcome, Ms. Stoner. The floor is yours.

Ms. STONER. Thank you, Chairman Gibbs, Ranking Member Bishop and members of the subcommittee, for the opportunity to appear before you today, along with Assistant Administrator Giles to discuss the U.S. EPA's efforts to achieve better water quality improvements through integrated municipal stormwater and wastewater planning and innovative approaches for meeting our infrastructure challenges.

We were pleased to hear from the other witnesses at today's hearing, and look forward to moving forward with the integrated water quality planning approach as a way to offer municipalities an opportunity to meet Clean Water Act requirements in a more effective manner and in a way that achieves the highest priority goals more quickly.

The EPA, States, and municipalities have often focused on each Clean Water Act requirement individually for protecting water quality. This approach may have the unintended consequences of

constraining a municipality from implementing the most cost-effective solutions in a sequence that addresses the most serious water quality issues first. Since last fall, we have been working to clarify the integrated planning approach by developing a framework document to help explain how the Agency will work with State and local governments.

On June 5 of 2012, after holding a series of public workshops around the country to gain input on the approach, we signed a memorandum to EPA regions that transmitted the final framework. The framework outlines the principles we will follow in implementing the integrated approach and provides further guidance on developing and implementing effective integrated plans under the approach.

It also outlines new flexibility to pursue innovative cost-saving solutions, like green infrastructure, that will help communities develop plans that prioritize their investments in stormwater and wastewater infrastructure.

Let me briefly talk about what the integrated planning approach is and is not. The integrated approach is optional, not mandatory. Any community satisfied with its current approach to water and wastewater requirements can continue that approach.

The integrated approach does not entail lowering existing Clean Water Act standards. Rather, the approach will take advantage of the flexibilities in existing EPA regulations, policies and guidance to allow municipalities to sequence implementation of their Clean Water Act obligations to protect water quality and public health at a reduced cost.

The integrated approach relies on Clean Water Act permits as critical tools for protecting water quality and achieving Clean Water Act compliance. Permits can include the use of multiyear compliance schedules and can incorporate innovative solutions that best achieve public health and environmental goals while meeting the needs of the community. They also can be flexible and include the adaptive management approaches that several advocated for today.

Integrated plans can be tailored to the needs of the community, and can include innovative techniques. EPA's existing regulations and policies provide flexibility for the EPA and States to design solutions that meet community needs. These solutions can include innovative tools such as green infrastructure techniques and asset management approaches, that is actually what George Hawkins was talking about, asset management approaches, that provide a better basis for decisionmaking on a utilitywide basis and support the long-term financial sustainability of the municipality.

We at the EPA look forward to working with this subcommittee, our State colleagues, municipalities and many other partners, stakeholders and citizens to implement the integrated planning approach. We are committed to maintaining improvements in water quality and moving forward toward full attainment of water quality and human health goals.

Thank you again for inviting me to testify. Assistant Administrator Giles or I will be happy to respond to any questions you may have.

Mr. GIBBS. Ms. Giles, you are welcome.

Ms. GILES. Thank you, Mr. Chairman. Thank you for giving me the opportunity to make a few comments. I am happy to be here today along with my colleague, Nancy Stoner, to talk about the collaboration between EPA's headquarters and regional permitting and enforcement programs to improve water quality through integrated municipal stormwater and wastewater planning.

We have made tremendous progress towards cleaner water over the last four decades. Our goal is to continue to make progress on clean water goals shared by communities across the country by working together to make smart choices about priorities, take advantage of innovations, and make sure that the most important work is done first. These principles are the foundation of the integrated municipal stormwater and wastewater planning approach that we have now finalized and are implementing.

We listened to States, cities, wastewater utilities and many others in developing the final framework. We heard and have responded to the need for flexibility to adopt affordable and common-sense sequencing of work, to address the most important problems first, and respond to new information over the course of the community's implementation of its plan.

We were also encouraged that communities are increasingly embracing green infrastructure as part of an affordable solution to protect water and revitalize communities, and the framework supports those choices.

We agree that the best answer will vary by community, and that solutions need to be tailored to each situation. Sometimes a permit will be the way to accomplish these objectives, sometimes an enforcement agreement, and sometimes a combination of approaches will work best.

We have reached agreements with many cities across the country, including Indianapolis, Cleveland, St. Louis, Atlanta, Philadelphia, Chattanooga, and many others that include these new green infrastructure and integrated planning approaches. We look forward to working with these communities and many others who would like to pursue an integrated approach.

I am happy to respond to any questions.

Mr. GIBBS. Thank you. You heard the first panel, and I appreciate you listening to them so you got it firsthand. I think I will start off. You heard the first panel discuss about the pilot community demonstration projects and what, Ms. Stoner, what you said back in December at our first hearing.

Where are we, where is the EPA on that? Because it seems like to me if you can do that, that would highlight what is going on, it would maybe work out the kinks and finesse it a little bit to make this work, because I know you are committed to making this integrated permitting process work. But where are we on setting up some demonstration projects like pilots to work through this?

Ms. STONER. Thank you, Mr. Chairman. Yes, we are in a position where we have not turned anyone away yet from this voluntary program. So all are welcome. So it is not an exclusive list, but we are doing the very best we can to work with the resources we were given, to work with those communities that have stepped forward and indicated that they would like to work with us. That is where we are.

Mr. GIBBS. What are you doing to reach out to them? Are you taking the initiative, or are you waiting for them to come to you?

Ms. STONER. We are absolutely reaching out to communities. Every regional office has been asked to work through the States. The permitting authorities in 46 States—the States do the permitting in 46 States, and we have asked the regions to reach out to the States and the States to reach out to the communities. We have done Webinars. We have done five stakeholder meetings. We are getting the word out and asking people to come work with us.

Mr. GIBBS. Do you have a response coming back? Do you think you will have some setup here in the next 30–60 days going forward? What kind of response are you getting?

Ms. STONER. Well, we are already working with a number of communities on both the permitting side and on the enforcement side, so we have a number that have already stepped forward and we are working with them.

Mr. GIBBS. OK.

Ms. GILES. I would agree. We had quite a number of discussions ongoing, some of which have reached conclusion, such as in the city of Seattle, and some of which are ongoing. So we are working with Philadelphia, and I believe George Hawkins mentioned in DC, and many other communities, Cincinnati.

Mr. GIBBS. I would appreciate it if you would keep my subcommittee staff up to date on the progress of that so we can monitor that, especially since we aren't going to be here much.

A lot of things came up, the consent decrees. Is it possible, I think your intent, we have issues with the permitting. It is 3–5 years, extending that, versus consent decrees. Let's go, for example, a municipality entity is under a consent decree. Is the EPA willing to show flexibility if that entity is willing to develop an integral plan? What are you allowed to do and what are you willing to do?

Ms. GILES. Absolutely. We have said repeatedly, and we will repeat again here, that we are happy to work with communities under existing agreements to adopt an integrated plan, and we have some record of amending existing agreements to do that, most recently, Indianapolis and Atlanta.

Mr. GIBBS. You heard in the first panel about the third-party lawsuits. Can you maybe expound on that, what the challenges are there, if it is something we could address. I guess what I am saying, if an entity, city, whatever, has a plan and the EPA, you are all working hand in hand, you have set the goals and they are making their benchmarks, and a third party comes in and says hey, you are not doing it fast enough, even though the affordability and all that, can you expound on what those challenges are to help the committee understand that a little better?

Ms. STONER. Let me address the permitting side of it. So under the Clean Water Act there is a permit shield provision. So any permitted entity that is in compliance with its Clean Water Act permit is shielded by the law from third-party lawsuits. We think we have the flexibility now under the existing statute and regulations to include compliance schedules in NPDES permits that will enable entities to be incorporating those long-term plans right into their permits in the 5-year increments, and to do adaptive management as

they go along and learn more. So we believe we have the flexibility now.

There is one caveat to that, which is a State which does not allow that flexibility may not enable the permit to have that occur. But every State can allow those compliance schedules to be in permits if the State chooses to do so, and they can make that change now for any requirements that are not allowed now to be included in those 5-year permits.

Mr. GIBBS. Are you at the EPA considering on the integrated permitting process to open it up more than just as you heard in the testimony, drinking water, groundwater, if they have challenges with that, or some of the other things they have to come into compliance with, just besides the sewer overflows, for example?

Ms. STONER. Well, our focus right now is integrated the wastewater and the stormwater, but that does include those asset management issues that we were talking about earlier. So the full range of wastewater and stormwater, whether it is an obligation or whether it is providing the infrastructure necessary to provide those sanitary services to the public, all of that can be considered right now. That is the focus of our approach.

Mr. GIBBS. To follow up a little bit, in the testimony I am trying to recollect here a little bit, the affordability piece, is EPA looking to address that? You heard from every panelist I believe that you get wealthier people in the community and poorer people, and unfortunately the people on the lower end of the economic scale get hit hardest, and some of the formula determining it, the 2 percent. I also couple that with would EPA be more willing to look at the total integrating plan, the 2 percent, and not be in silos for each project?

Ms. STONER. So the framework already talks about allowing consideration of disproportionate burdens on portions of the community. It also allows consideration of State and local tools as well as the financial capability assessment guidance. And that number that people were referring to repeatedly, the 2 percent median household income, is not a floor or a ceiling. It is just a guide. So I believe the flexibility already exists in the framework that they are looking for.

What I heard a lot of people saying is that they would like to have more resources available, and certainly the needs are great. But we think we have the flexibility now under the framework to address this as best as we can in partnership with State and local communities using the resources available.

Mr. GIBBS. OK. I will turn it over to Ranking Member Bishop.

Mr. BISHOP. Thank you very much, Mr. Chairman, and thank you both for your testimony, but more important, thank you both for the work that you have done over the last several months on this integrated framework. I think the testimony that we heard from the previous panel, which, as I said before, was nearly unanimous in its both endorsement and appreciation of the work that you have done, is something we don't often hear in this committee. So I thank you for that.

I just have two questions. The first is we now have a framework. We are going to have to test that framework. So my question is to what extent is the EPA prepared to be additionally flexible going

forward as we see whether or not the framework does, in fact, result in the desired outcomes or whether we are going to need to either introduce additional flexibility or whatever?

Ms. Giles?

Ms. GILES. Yes. We designed the framework so that we would allow that additional flexibility, and I think one of the things that you heard from all of the witnesses today on the first panel is the importance of being able to adapt to the specific circumstances of a community. So that is why we designed it in the way that we did, so that we can work with each community to try things that will work for them. And as we go, we will learn by doing. And I think the communities will also learn from each other about which programs work well.

Mr. BISHOP. OK. Thank you. Ms. Stoner, anything to add?

Ms. STONER. No. I agree.

Mr. BISHOP. All right. The second question. We heard from Mr. Portune and others in the first panel about whether they would be called model cities or showcase communities or pilot projects or whatever. So my question is this. One of the mantras of this committee has been that we should be doing more with less. Now, we are certainly providing the less. The EPA's budget, if the chairman's mark in the House Appropriations Committee is enacted into law, it would result in a \$1.4 billion reduction year-to-year under fiscal year 2012, a 17-percent reduction in 1 year.

So my question is, if we agree that this notion of having showcase communities is a really good one, that is worthy of an effort, does the EPA have the capacity, do you have the financial capacity to invest in these showcase communities, or would such an effort require additional appropriations, or would you have to hurt some other activity of the EPA in order to undertake this one?

Ms. STONER. As you are probably aware, the State Revolving Funds that are the principal source of funding we have under the Clean Water Act and the 319 funds, they all go to the States and they are distributed according to formulas, and we couldn't just shift money to particular communities even if we thought—

Mr. BISHOP. I am sorry, I don't mean to interrupt, actually maybe I do. Are you saying that this is a State-based decision as opposed to a Federal decision?

Ms. STONER. Well, it is the Federal law. The grant money goes from us to the States, and then the States distribute it. And there is no specific pot of money set aside anywhere that I know of for pilot communities on this.

Mr. BISHOP. So to be clear, if we were to engage in pilot communities, that would require an investment on the part of the States, from their SRF funds, in order to make that happen. Is that correct?

Ms. STONER. Yes, if they chose to do that.

Mr. BISHOP. And we are handicapping, or handcuffing the States by virtue of the huge reductions that are proposed for the SRFs. So this notion, even if it is a really, really good one of pilot communities or test communities, would be really hard to pull off. Is that a fair assessment?

Ms. STONER. There is no new money available for this.

Mr. BISHOP. I think that is a yes. OK, thank you very much. I yield back the balance of my time.

Mr. GIBBS. Representative Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. And after that, the administrative handling fees for the State upon the entities if there were to be such a program, or I mean if they were going to be able to do that. So that if you sent it to the State and the States get a certain amount, 5, 10, whatever percent for administering the programs to the cities, so you lose money in that area, right?

Ms. STONER. The amount of money is fixed, so if one city gets more, another city gets less.

Mrs. NAPOLITANO. Well, you heard some of the questions that I had posed to some of—and thank you very much. Your western representatives are great with my communities, especially my councils of government. They have done an outstanding job. I know years ago they came to me because they were being asked to comply with the runoff to the ocean, and they felt that it was very hard for the cities to be able to keep sacred stuff from going to the ocean and then be fined by EPA, so they came to some agreement in that area. So thank you for that.

Last December, I had asked you a question regarding the 28 different agencies that deal with the water issues and how does the integrated framework memorandum address integration across all these various agencies of the Federal Government that deal with water, and how do we know that we can help in being able to clarify or assist in making it a little better, less paperwork, less work, less funding, and as was pointed out, expensive forms, time consumed in that.

Ms. STONER. We do have a number of efforts that are efforts at integrating the Federal agencies and their approach to working with communities. That is actually the centerpiece of what the urban waters effort is, which was created by Administrator Jackson, and it is to work with communities on what their priorities are in terms of reviving their water bodies and access to those water bodies and arraying all of the Federal agencies that can help put that together through the various mechanisms they have.

Mrs. NAPOLITANO. You did make mention that you do reach out to some of the communities to be able to help them learn more, but I am sure, as with everybody else, your funds have been consistently diminished to be able to do that outreach. Well, that is no different for the States' current standing, especially in California where many cities are going bankrupt. So there is very little way for them, or no way at all, for them to be able to implement any of the requirements. So this then becomes a great issue for entities.

And then again, going back to the disenfranchised communities such as the tribes and the colonias, which have no Government, the colonias, so-to-speak, and the tribes, because sometimes they do not have the ability to be able to navigate the Federal system. Can you give some examples of how the integrated planning might be beneficial to these entities to be smarter and more efficient in the development and use of water, and how are you going to deal with them, what outreach or education will you be providing?

Ms. STONER. So we do provide funding to tribal nations, with running—can you hear me now? How about now?

Mrs. NAPOLITANO. I think your system is gone. You can just speak up. I think somebody might have leaned on something.

Ms. STONER. We do work with tribal nations. We do have some funding to provide to them to continue the funding to assist tribes in developing water quality standards and protecting those tribal waters. I think this kind of approach that we have will help all communities—

Mrs. NAPOLITANO. I am sorry to interrupt, but my time is coming up. What about the nonfederally recognized tribes.

Ms. STONER. The funding does go to federally recognized tribes.

Mrs. NAPOLITANO. Only the federally recognized, and the others are out of luck?

Ms. STONER. Just the federally recognized. That is my understanding.

Mrs. NAPOLITANO. That can create a problem, because there is the issue of health, and that is maybe something we need to be able to get more in tune with. There is a whole bunch of other questions, but can you describe some of the green infrastructure tools that you are proposing that water agencies use as part of the integrated solutions to the water management?

Ms. STONER. Absolutely. So green infrastructure is very popular with communities we are working with. They find that whether it is swales along roads, whether it is rain gardens, green roofs, rain water harvesting, all kinds of approaches that they can use to reduce pollution and augment water supplies. But I think communities drive economic revitalization. We find it is very popular in a lot of communities and want to integrate that into their existing plans.

Mrs. NAPOLITANO. A lot of this new technology coming up, being able to utilize solar panels or other means of being able to produce energy that will cut the cost of, say, the pumping and other stuff—there you go, are you working with any of the entities that are making these groundbreaking new technologies available and being able to, not promote necessarily an item or a business, but being able to cut the usage of electricity, for instance, to do some of the work?

Ms. STONER. Yes. We are doing the best we can in terms of providing technical assistance. Just last week we provided \$950,000 in technical assistance to communities who want to know how to get going on green infrastructure, how to evaluate what they can do to remove local barriers. I was just up at a Water Environment Federation conference on new technologies in stormwater management just last week also in Baltimore. I think there is a lot of enthusiasm and a lot of efforts being made both inside and outside the Government to disseminate knowledge about these technologies so everyone can benefit from them.

Mrs. NAPOLITANO. I am sure you do—just a second more, Mr. Chair—you know a lot of those new technologies. But how would an entity that has no idea of how to get that information, how would they be able to know where it is? Do you give it to the Members of Congress, do you give it to the cities themselves, is it published in the Conference of Mayors, the National League of Cities, so they can disseminate it to those that don't have your Web site,

your email address or any other way of getting in touch to provide this information to help themselves?

Ms. STONER. We do all of those things that you are talking about. We did just redesign our Web site to make it easier for people to find information. We are putting together an opportunity for green infrastructure, not too much, and so we are working on getting the word out through all of those different partners that you mentioned. And the other thing that is happening is that there is lots of consultants who are also letting people know about these technologies and how they can help their communities in employing them to revitalize their waterways.

Mrs. NAPOLITANO. Thank you, Mr. Chairman. Thank you for the indulgence. Thank you for your answers.

Mr. GIBBS. Representative Edwards.

Ms. EDWARDS. Thank you, Mr. Chairman. Ms. Stoner and Ms. Giles, I hope you don't take this personally. We want to hear you.

Ms. Stoner, I wonder if you could tell me, I know here in the metropolitan region, the Anacostia watershed runs through Prince George's County where I live and represent, and last year the county received \$200,000 from EPA to implement several green infrastructure initiatives. You had an opportunity to visit one that was supported by the EPA out in Edmonston. And I have to tell you for these small municipalities, when they get that, what is really essentially a little bit of money, the other municipalities, one, they want to compete with each other, they want to outdo each other, they want to do green infrastructure. Do you have plans to award competitive grants to municipalities on an annual basis?

Ms. STONER. I wish I could say yes to that. So we did just give some money, it was actually technical assistance, to communities wanting to do green infrastructure. We also have urban waters grants. We also use Brownfields grants which can include green infrastructure. There are some communities that have gone to TIGER grants from the DOT to get that money. So it is really about putting together the pieces, what is it that a community wants to do, can it be funded through DOT, through HUD, through EPA? USDA has an urban forestry program. So that is what we are trying to help people do, is identify as the resources are shrinking, what are the pots of money available to help them do what they need to do.

Ms. EDWARDS. Well, I appreciate that, because these are incredibly popular, and even with the technical assistance it provides a little bit of resource to help communities understand what they have the capacity to do and then to do even the little things that can make a huge difference in a watershed.

I introduced, and, of course, you know this because you helped me work on it before you came to the EPA, H.R. 2030, which is the Green Water Infrastructure Act, and among other things it would establish three to five centers of excellence for green infrastructure, these would be located throughout the United States, on the theory that we have to do some of this stuff regionally, that we can't think about one-size-fits-all approach when it comes to green infrastructure because regions are simply different.

You have recognized the need for establishing best practices for water infrastructure, green water infrastructure. Can you tell us

what practices are emerging and how you have been able to communicate that with stakeholders?

Ms. STONER. Sure. I think there are increasing practices that are finding out how to harvest that rainwater. For example, putting the stormwater back in the ground where it can replenish groundwater and subsurface flows. That is one of the things I am seeing a lot of development in. We can continue to see development in green roofs and blue roofs. We certainly continue to see development in terms of methods for addressing stormwater runoff from transportation, including storage under streets, under roads.

So there is a lot of innovation that is occurring. There is a lot of new businesses developing around these innovations. And, as I believe George Hawkins said, these are also jobs. People can build this and maintain it. Those are local jobs that we can create through those efforts.

Ms. EDWARDS. One of the things that occurs to me is that with the green infrastructure practices, in our earlier panel, we heard a couple of allusions to, or skepticism expressed about whether overall it would actually save money.

Do we have any more empirical data or are there things that we can investigate to look at this question? Because I think, particularly for the larger municipalities where we really need a lot of work, for them to be able to adopt these practices, there has got to be a real benefit in the cost. So how do you track that?

Ms. STONER. We are doing a lot of work to look at the cost and the benefits. So the benefits are multimedia benefits. So it is pretty complicated to look at them. But we are looking at things like air pollution reduction, urban heat island reduction, as well as water quality, flooding reduction, enhanced water resources and so forth.

But we are also looking at the cost. And I do think that green infrastructure can compare favorably from a cost standpoint with a lot of traditional approaches, particularly as you get to what is called the knee of the curve.

So as you move out on, for example, on the reductions in combined sewer overflows or sanitary sewer overflows per gallon, as again George Hawkins was talking about, you can get more expensive costs out on the end of the curve. And green infrastructure can help a lot with respect to being cost favorable with respect to those additional reductions at the end of the curve.

Ms. EDWARDS. I will submit another question for the record that goes to how you deal with issues around good faith efforts by local communities in the consent process, because that was an issue that came up earlier, and I think it is important to have EPA's perspective about how it looks at that in the permitting process.

Thank you, Mr. Chairman.

Mr. GIBBS. We are going to wrap up. I appreciate you all being here and listening to the first panel. I hope that, I am sure you did, from the first panel catch their passion and their dedication. And we are all committed to reach a goal of cleaner water, but the challenges and demands that these local communities go through and the expenses. Hopefully you heard the message of flexibility, the affordability issue and the challenges that they have, and we look forward to working with you in the future as we implement the integral plans.

So thanks for being here, and this concludes this hearing.
[Whereupon, at 12:42 p.m., the subcommittee was adjourned.]



THE UNITED STATES CONFERENCE OF MAYORS

Written Testimony

Mayor David Berger, City of Lima, OH

**Water Resources Subcommittee –
House Transportation and Infrastructure Committee**

July 25, 2012

Written Testimony for Mayor David Berger, City of Lima, OH
Water Resources Subcommittee - House Transportation and Infrastructure Committee
July 25, 2012

Good morning. I thank Chairman Gibbs and this committee for inviting me to participate in this Hearing. I am Dave Berger and I serve as the Mayor of the City of Lima, Ohio, an office to which I was originally elected in 1989. Though I am a life-long registered Democrat, my office is non-partisan and I have worked with elected officials of all stripes throughout my 23 years of service.

It is in that same spirit that I am testifying on behalf of The U.S. Conference of Mayors (USCM). The Conference of Mayors is the official national non-partisan organization representing cities with populations of 30,000 or more through their chief elected official, the Mayor. The Conference of Mayors was created in 1932 as a result of the Great Depression. A time that is markedly similar to today – times with high unemployment and tough economic conditions.

At the Conference of Mayors, I serve as an active member of the Mayors Water Council and have been part of more than two years of discussions that led to US EPA's Integrated Planning Memorandum. As Mayor of Lima, I have been engaged with the Ohio EPA and the US EPA Region 5 office negotiating a long term control plan to address sewer overflows for the last decade. This experience affords me a unique perspective to comment on the matter before this subcommittee today.

My colleague and fellow Mayor, Jim Suttle of Omaha, Nebraska, testified before this subcommittee in December of 2011 about why the Mayors of this nation are concerned about Combined and Sanitary Sewer Overflow (CSO/SSO) solutions and other unfunded water related mandates. He identified what we all hoped US EPA's Integrated Planning Policy Framework (IP Framework) would address, as well as some suggestions concerning Congressional involvement. My comments are supportive of those provided by Mayor Suttle, and they represent the collective views of mayors in connection with actions taken by EPA on the IP Framework in the period since this Subcommittee last held its hearing (December 2011).

Broadly speaking, the IP Framework does deliver some of the flexibility sought by local governments in regulatory implementation of the Clean Water Act (CWA). The US Conference of Mayors recognizes that US EPA has put forth a major good faith effort to respond positively to the cities' requests for flexibility. However, the IP Framework provides some of the flexibility requested by cities but falls short in certain critical areas that we think are the specific areas of the Clean Water Act that require deliberate legislative action by the Congress for both clarification purposes and new policy setting. Beyond this, there is a much needed role for Congress to provide oversight on how US EPA implements the IP Framework in its 10 Regions and in our local communities.

The USCM continues to emphasize support for US EPA's unprecedented actions to mature their rule-by-silo/command-and-control approach to an integrated planning format. (see USCM Press Statement, June 19, 2012 Appendix A). The USCM also continues to emphasize that the

successful implementation of this policy approach requires local, state and federal government offices and officials to develop a shared stewardship approach to make it happen.

Positive Progress on the Integrated Planning Framework

US EPA Delivered on its Promise to Create a More Flexible Regulatory Approach:

The mere fact that US EPA developed and disseminated the Integrated Policy Framework (IP3) to its Regional Offices is encouraging because of its radical departure from the 40 year pattern of rule-by-silo/command-and-control regulatory strategy. Mayors are encouraged by US EPA's willingness to rekindle its former "Intergovernmental Partnership" to work together with cities to achieve clean water goals.

Of particular noteworthiness for cities, the US EPA clearly states in the June 5, 2012 *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* that the Agency officially embraces integrated planning, is committed to work with states and communities to implement and utilize these approaches, and recognizes the importance of prioritizing capital investments. Other important elements in the Framework document include the fact that using the integrated planning approach is voluntary on the part of a community, and the relative importance of investments tied to local environmental priorities can play an important role in both permits and compliance schedules.

The potential level of flexibility suggested by the Framework document is seen by Mayors as an intended paradigm shift in the regulatory attitude of US EPA, and this is welcome and encouraging to the nation's Mayors.

Regional US EPA and State Regulator Training in Implementing the IP Framework:

On June 7, 2012 US EPA Deputy Director Robert Perciasepe and several US EPA Assistant Administrators held a conference call with members of the Conference of Mayors, including myself, to discuss the roll-out of the IP Framework. In particular, US EPA officials indicated that US EPA Headquarters had begun a program of education with the US EPA's Regional Offices to discuss how to implement the IP Framework. Mayors are encouraged that US EPA Headquarters is playing and promises to actively play a role in explaining the principles and the elements of the IP Framework to Regional staff and to State water regulators involved with water issues and permits for municipalities.

Promoting New and Alternative Technology, and Green Infrastructure:

A commendable aspect of the IP Framework is that it allows communities to petition US EPA/States to reopen existing consent agreements to reconsider new, alternative and green infrastructure. This is a welcome change of attitude. The IP Framework places the burden of

taking the initiative on the permittee (community), and this approach is acceptable because not all cities want to reopen or alter their existing agreements.

It is noted here that the IP Framework text promoting green infrastructure as an integral part of a long term control plan (LTCP) to comply with the CWA should be seen in conjunction with US EPA's Memorandum to the Regional Offices that promotes incorporation of green infrastructure in permits and consent agreements. More than any other provision in the IP Framework, the new, alternative and green infrastructure flexibility has the potential to lower overall compliance costs for cities.

Critical Concerns

Affordability:

Affordability continues to stand out as the single more important issue for local governments, our citizens and our businesses. While the IP Framework provides opportunities to evaluate and revise priorities in planning for compliance with CSO/SSO and other CWA obligations, it does not appear to address the fundamental question: what can our citizens reasonably afford to invest? That is an issue on which you, the Congress, can and should provide direction. We, as a society, are either at, or rapidly approaching, the limits of affordability in the public water and wastewater sectors. Merely extending compliance timeframes does not remedy the affordability problem that cities face. It eases some of the investment carrying cost over an extended period, but does nothing to cap or limit current and cumulative future cost of mandates.

Lima, Ohio: An Illustration of Affordability

The CSO/SSO situation in my community, Lima, Ohio, helps illustrate the affordability problem. Our local experience is not unique. From the perspective of USCM it is commonplace.

The US EPA's CSO Policy relies on consent decrees and/or administrative orders (and sometimes NPDES Permits) that establish legally enforceable LTCPs designed to achieve compliance with water quality standards. Significant capital investments and substantial, annually recurring operating and maintenance (O&M) investments are necessary to implement the plans. The current benchmark to measure affordability is comprised of a two-tiered test involving two metrics: the Residential Indicator (RI) which considers household affordability and centers on 2% of Median Household Income (MHI); and the Financial Capability Index (FCI) which considers a suite of 6 factors that characterize some economic aspects of a city's economic health and the ability of a city wastewater utility to finance additions, upgrades, etc. to comply with the LTCP requirements.

The Residential Indicator (RI) is the preliminary screener for affordability. If the LTCP cost is less than 1% of MHI, then the CSO Control Policy suggests a low economic impact. If the cost impact is above 1% and below 2% of MHI it is considered a mid-range economic impact. A cost impact of greater than 2% of MHI is considered a large impact. Mid-range and large impact cases trigger the secondary screening metric, the FCI metric analysis. State and US EPA regulators have the authority to determine from the outcome of these analyses if further LTCP

controls are affordable. Such decisions, however, are not fully transparent to the city involved with the consent agreement proceedings.

Mayors do not question the need to apply a cost impact assessment algorithm, or the use of certain reasonable benchmarks for characterizing cost impacts. The 2% of MHI benchmark, on the other hand, suffers from several flaws. First, there is serious confusion about the origins of the 2% of MHI as a 'standard' benchmark for measuring household affordability. US EPA has not provided a clear and convincing case that it is appropriate for this specific purpose. Indeed, perhaps ironically, its history is related to assessing affordability involving the agency's construction grants program and rural assistance in the early 1970s. In the 1980s US EPA considered that the cost of complying with new Safe Drinking Water regulations would be unaffordable if they reached 2.5% of MHI. The US EPA's CSO Control Policy, however, adopted the 2% MHI in relation to the cost of CSO/SSO long term control plans. Thus, the winding path of the 2% of MHI benchmark to assess affordability appears to be based on a patch-work of previous policies, all considered within the silos of their regulatory purposes and impacts and without regard to one another.

A second related fault of the CSO 2% MHI benchmark is that it assumes that an additional 2% of MHI devoted to the LTCP is an acceptable financial burden. This application of the 2% MHI benchmark ignores both the cumulative cost impact of all CWA federal mandates, and the needed investments cities will be required to make to sustain existing wastewater systems. In connection with the cumulative cost impact concern, US EPA has not conducted a thorough review of the costs associated with this mandate in addition to other federal mandates. OMB's **MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES**, March 20, 2012, calls for the Agency to conduct a review of the "Cumulative Effects of Regulations". Given the extremely costly controls anticipated by the CSO/SSO consent agreements, indeed the unprecedented costs involved, the US EPA should halt enforcement efforts related to CSO/SSO compliance and complete a cumulative effects analysis before they force cities into unaffordable LTCPs.

The CSO 2% MHI affordability benchmark should be demonstrated by EPA to be cost-effective and affordable in the context of cumulative costs for federal mandates. The EPA can be requested by Congress to conduct such an analysis. Consider, for example, what the potential implications of a series of 5 or more CWA regulations would be on various household income categories. Each of the regulations will have a financial impact, some of them may be as great as 2% of MHI. Assume the CSO requirements exact a 2% impact and the four other regulations each have a 1% impact, then the cumulative impact amounts to 6% of MHI, not counting rate increases required to operate, maintain and rehabilitate the sewer system, nor does it account for inflation. Such application of the 2% of MHI benchmark would support US EPA requiring households to pay up to 10% or more of the household income of the lowest income category in any city.

A third and major fault with the application of the 2% of MHI affordability benchmark is that it imposes a disproportionate and regressive burden on households that are least able to afford it, low, moderate and fixed income households. This outcome is a clear environmental injustice to the poor. This is because the 2% MHI benchmark essentially applies an economic indicator keyed to a household income class that enjoys an income that is much higher than the lowest household income categories in any given community.

I turn to my community, Lima, a proud community of modest financial means to illustrate this point. We are a city that has shrunk from roughly 52,000 to 38,000, as more affluent households have moved to the suburbs. Our annual median household income is roughly \$26,943, as reported by the Bureau of Census (See Appendix B for figures and references). Nearly one-third (30.3 percent) of Lima citizens are living under the poverty threshold of \$22,313 for a family of four. Additionally, our demographic profile includes aging baby-boomers that comprise a substantial and growing class of fixed income seniors. Our low, moderate and fixed income households are particularly vulnerable to increasing costs of basic services.

Since the passage of the Clean Water Act, the city has spent \$58 million on capital improvements, with \$25 million of that amount coming from the federal government as a grant. As a result we have substantially improved the water quality in the Ottawa River which cuts through the middle of the city; an improvement in which now 65% of the river is in full attainment of water quality standards and 34% in partial attainment. We are proud of what we have accomplished. But we are urgently concerned about what is now being demanded of us by US EPA and the costs which those demands will impose.

When the 2% of MHI (\$538.86) for the proposed LTCP is added to current average annual sewer bills (\$332.76), it raises the average annual sewer bill to \$871.62. That amount would have little impact on our high income households¹, but its impact on our poor households would be enormous.

The financial impact for the households in Lima is exhibited in Appendix B – Table B.

- Some 47% of households would experience rate increases above 4% of household income.
 - Nearly 16% of households (those with MHI of \$10,000 or less) would carry an 8.72% burden, up from the already high current 3.3% of household income without the additional 2% of city-wide MHI.
 - Another 12% of households would experience rate increases that would cost 6.97% of their household income.
 - Nineteen percent of the households would experience rate increases that would cost 4.36% of their income.
- Almost 26% of households would experience rate increases bringing their annual bills to between 2% and 3% of household income.
- The high income households, 26% of my community, would feel no great financial impact from the rate increases since the additional burden would bring them up to from 0.44% to 1.39% of household income.

The USCM has continuously asserted to the US EPA that affordability of LTCPs should consider all water and sewer costs to an individual household before decisions are made concerning the extent and cost of those LTCPs. Combined average annual water and sewer bills in Lima are

¹ The U.S. Office of Personnel Management (OPM) Salary Table No. 2012-EX lists rates of basic pay for the executive schedule: Level V \$145,700 to Level I \$199,700. The financial impact on these households would range from 0.598% for Level V and 0.436 for Level I.

\$490.08, (Appendix B-Table A). Adding the 2% of MHI (\$538.86) to the \$490.08 average annual combined bill results in a new combined average annual bill of \$1,028.94.

The new combined average annual water and sewer bill explicitly establishes a set of dramatically regressive and disproportionately burdensome financial impacts on the low, moderate and fixed income households in Lima. The lowest income household category would be required to spend 10.29% of their household income for water and sewer. Indeed, over 73% of households in Lima would be paying over 2% of their income for water and sewer.

The 2% of MHI benchmark is a poor indicator of affordability unless it is compared to household income categories. And when it is compared to household income categories other questions arise as to affordability of LTCPs more generally. For example, if the lowest income households are paying 6 to 10 percent of their household income on water and sewer, including an LTCP, then how affordable will any additional federal mandates be under authority of the CWA and/or SDWA? Does US EPA take the position that additional cost burdens on the lower income households related to increased rates to pay for improvements, repair and replacement (with inflation) should not be considered in their affordability analyses for LTCPs? Why aren't public expenditures for other social programs (not necessarily water related, but especially those programs intended to aid the poor) considered when determining affordability for LTCPs? For example, what impacts do increased sewer rates have for cities that must absorb the cost in their public housing programs for the low and moderate income households?

Another fault with the 2% of MHI affordability benchmark is that there is no clear definition of what constitutes "widespread economic and social impact" which is the basis for US EPA to determine if further controls are warranted and affordable. Federal Agency decisions on affordability using the CSO Control Policy method may be "arbitrary" by default if the RI and FCI benchmarks, once exceeded, provide no clear guidance on decisions concerning the cost of LTCPs. Defining impact that is not affordable is important but remains vague. Congress has an opportunity to define this more precisely.

In the American economy federal and state income taxes are based on a progressive taxation principle; purchasing water and sewer services at the local level is not. Local utilities like water and sewer are based on a user fee system, not on an ability to pay basis. Indeed, many state laws require that public water rates be fair and equitable, thus, local government strives to fairly allocate the cost of building, operating, and maintaining systems that serve their intended public benefit purpose and comply with state and federal law. That is one reason why local governments work hard to keep costs down. Mayors and city councils take as given that all citizens in their communities should have access to clean, safe and affordable water and sewer, and that is why the federal government should respect the principle of affordability. If the US EPA feels that their hands are tied by existing law, then Congress, with this knowledge of disproportionate impacts, can act to untie their hands.

Consideration of Combined Water and Wastewater Mandates:

The IP Framework does not formally incorporate flexibility for mandates related to the Safe Drinking Water Act (SDWA). The USCM has urged and continues to urge US EPA to formally incorporate both CWA and SDWA regulatory costs in the IP Framework. The Lima illustration

on financial impact across household income categories demonstrates that the impact on household budgets is serious, and therefore, the combined cost of water and sewer should be taken into account when LTCPs are developed. As US EPA continues to develop new CWA/SDWA mandates the cumulative financial impacts on low, moderate and fixed income households will continue to increase. The limits of affordability, in this respect, argues in favor of identifying priorities that make the most sense to guide investment of limited financial resources. If US EPA does not incorporate both CWA and SDWA into the Framework, Congress can act to direct them to do so.

US EPA Regional Implementation of the IP Framework:

US EPA's commitment to link Headquarters staff and leadership with their Regional offices on how to implement the IP Framework is encouraging but remains, at this point, a promise, not a reality. Most of the cities working with the USCM on the issue of CSO/SSO enforcement and consent agreement negotiations have experienced considerable difficulty dealing with US EPA Regional officials because that is where the responsibility lies with developing LTCPs. Given the history of US EPA Region's activities and behaviors in this regard, the USCM encourages both US EPA Headquarters and Congress to exercise due diligence in monitoring the Regions as they implement the IP Framework.

Achieving Water Quality Goals is better Accomplished Through the Permitting Process Rather than Enforcement via Consent Decrees:

The USCM stated the preference for accomplishing CSO/SSO compliance via the permitting process last year when Mayor Suttle provided testimony before this Committee. The USCM holds firm on this request, and there is little in the IP Framework that changes our belief concerning the permitting approach as the better approach.

The IP Framework states that US EPA anticipates that achieving compliance with CSO/SSO requirements can be accomplished via a permit, and administrative order and/or a consent decree. However, enforcement via the consent decree appears to be the method of choice for the US EPA as demonstrated by the enforcement strategy unfolding in the US EPA Regional Offices.

The US EPA has stated repeatedly in its series of five-city workshops held earlier this year on the IP Framework that current law (CWA) does not allow permittees protection from third party suits for non compliance unless they are protected by the legally binding terms of a consent decree. If that is truly the case, Congress has the ability to modify the CWA on this point by specifying that permittees fully engaged in a plan to comply with the CWA should be protected from third party law suits. If Congress were to make such a change, then the US EPA would no longer need to use enforcement tools to protect cities and utilities from citizen suits.²

² The USCM adopted policy at its Annual Meeting in June of 2012 entitled "SUPPORTING US EPA'S INTEGRATED PLANNING AND PERMITTING POLICY". (see Appendix D).

What Congress Can Do

Throughout this testimony I have highlighted specific actions that Congress can and must take to assist cities and our constituents. In 2011, the USCM unanimously adopted a resolution calling for CSO relief. That resolution asked Congress to either give cities at least 50% of the funding necessary to meet the federal CWA mandates as being interpreted by USEPA or give us relief. (see Appendix E: Resolution 43). Relief that would be specific in measurable ways:

The USCM urges Congress to address these issues directly with legislation amending both the Clean Water Act and the Safe Drinking Water Act. The premise we base this request on is simple: since the financial resources of our citizens, resident businesses and cities are limited, the CWA/SDWA must be crafted in a way that explicitly acknowledges and addresses the reality of those limited local resources.

- Congress can and must impose a cost cap on federal mandates.
- It can and should provide federal financial assistance at levels much greater than current State Revolving Fund loan programs and in the form of grants to local communities.
- It can and must provide a permit shield for cities from third party suits, and aggressive enforcement actions by state and federal regulators, for not complying with certain provisions of the water laws (for example, elimination of all SSOs even though some may have a negligible impact on water quality, and are therefore less of an investment priority) as long as the cities are working toward long term compliance under a permit.
- Congress can and should direct US EPA to halt enforcement campaigns against local governments in favor of US EPA programs for watershed planning and water quality permitting.
- Congress can and must act to prohibit US EPA from exacting fines and penalties against local governments that are engaged in good faith efforts, and are investing capital, to comply with water/wastewater regulations under permits.

Cities are not criminals or criminal enterprises, and should not be treated as such. Cities are stewards of the public trust, a responsibility that we share with the state and federal governments and should be accorded the respect of a shared stewardship of our environment.

We need Congress to provide relief.

We need Congress to provide oversight and to remember that US EPA has its authority because of the way the Clean Water Act was written and enacted by the Congress. We need a paradigm shift where local, state, and the federal officials exercise practical leadership and work together to determine what our environmental and spending priorities should be.

Thank you again for this opportunity to address you.

Appendix A:

**The United States Conference of Mayors
Press Statement Regarding the USEPA
Integrated Planning Framework**



The United States Conference of Mayors

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FOR IMMEDIATE RELEASE
June 19, 2012

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The U. S. Conference of Mayors Praises EPA's Newly Released Integrated Planning Framework

Framework Marks Major New Milestone Modernizing EPA's Implementation of the Clean Water Act

Washington, D.C. - The U.S. Conference of Mayors welcomes the release of EPA's Integrated Planning Framework for implementing the Clean Water Act (CWA). The Framework, (also known as IP3), is designed to promote greater flexibility for cities struggling to finance and maintain existing wastewater infrastructure and services and respond to new federal regulations that expand city responsibilities, such as costly control of stormwater and sewer overflows.

The Framework outlines several key principles to guide how EPA will work with cities and utilities "...to implement an integrated approach to meet their wastewater and stormwater program obligations under the CWA." The Framework contains a description of the elements that should be included in an integrated plan. EPA states that cities can ask the Agency to work with them and state regulators on integrated plans whether or not they are in a consent decree agreement, or are developing one.

Tom Cochran, CEO and Executive Director of the Conference stated, "We are delighted to receive the Integrated Planning Framework from the U.S. Environmental Protection Agency, and look forward to working closely with the Agency in our cities and regions to move forward on clean water goals that are affordable and sustainable."

Cochran added, "The Framework provides a way for the federal, state, and local government, as well as the citizens in our cities, to rebuild a partnership to solve water quality issues. It establishes a formal recognition by EPA that unfunded mandates should consider a city's limited resources, and that they can work together to direct local investments that address our most pressing water quality, public health and environmental issues."

The Conference will continue to work with its member cities and the EPA to implement this important new approach to making progress on clean water goals and determine how to deal with critical issues such as: affordability and fiscal impact on our most vulnerable households (low, moderate and fixed income households); moving away from enforcement driven consent decree actions to planning and partnering with EPA; and how to merge consideration of drinking water mandates simultaneously with CWA obligations.

"The EPA has, with the issuance of this policy, opened the door to cooperation. It signals a modernization of the regulatory approach, and provides a foundation from which adversarial relations can now morph back into the intergovernmental partnership that cities value so much," concluded Cochran.

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The U.S. Conference of Mayors is the official nonpartisan organization of cities with populations of 50,000 or more. There are 1,213 such cities in the country today, and each city is represented in the Conference by its chief elected official - the mayor. Find us at usmayors.org, on [facebook.com/usmayors](https://www.facebook.com/usmayors) or follow us on [Twitter @usmayors](https://twitter.com/usmayors).

Appendix B:

Affordability of CSO Compliance Fiscal Impact Illustration Lima, Ohio

July 25 House Testimony Lima: Illustration Worksheet

Population 2010, Census ACS = 38,771

Median Household Income \$26,943³

2 % of MHI = \$26,943 x 0.02 = \$538.86

Table A: Water Related Utility Bills in 2012

City of Lima Household Utility Bill	Monthly	Annual	Additional 2% of MHI
Sewer	27.73	332.76	\$871.62
Water	13.11	157.32	na
Combined	40.84	490.08	\$1,028.94

³http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_10_3YR_S1901&prodType=table

INCOME IN THE PAST 12 MONTHS (IN 2010 INFLATION-ADJUSTED DOLLARS)
2008-2010 American Community Survey 3-Year Estimates, US Census Bureau

**Table B: Household Cost Allocation -
Adding 2% MHI to Current Average Bills**

City of Lima ⁴ Household Income	Households ⁵ %	Household Income ⁶	Current Annual Sewer Bill \$332.76 as % of Household Income	Annual Sewer Bill with Additional 2% MHI \$871.62 as % of Household Income
Less than \$10,000	15.8	10,000	3.33	8.72
\$10,000 to \$14,999	12.1	12,500	2.66	6.97
\$15,000 to \$24,999	19.1	20,000	1.66	4.36
\$25,000 to \$34,999	13.2	30,000	1.11	2.91
\$35,000 to \$49,999	12.7	42,500	0.78	2.05
\$50,000 to \$74,999	16.7	62,500	0.53	1.39
\$75,000 to \$99,999	5.8	87,500	0.38	1.00
\$100,000 to \$149,999	3.8	125,000	0.27	0.70
\$150,000 to \$199,999	0.6	175,000	0.19	0.50
\$200,000 or more	0.1	200,000	0.17	0.44

⁴ Same as above

⁵ Same as above

⁶ mid-point of income category used over \$10,000, and up to \$199,999

Table C: Household Cost Allocation of Adding 2% MHI to Current Average Combined Water and Sewer Bills

City of Lima Household Income	Households %	Household Income	Current Annual Combined Bill \$490.08 as % of Household Income	Annual Bill with Additional 2% MHI \$1,028.94 as % of Household Income
Less than \$10,000	15.8	10,000	4.90	10.29
\$10,000 to \$14,999	12.1	12,500	3.92	8.23
\$15,000 to \$24,999	19.1	20,000	2.45	5.14
\$25,000 to \$34,999	13.2	30,000	1.63	3.43
\$35,000 to \$49,999	12.7	42,500	1.15	2.42
\$50,000 to \$74,999	16.7	62,500	0.78	1.65
\$75,000 to \$99,999	5.8	87,500	0.56	1.18
\$100,000 to \$149,999	3.8	125,000	0.39	0.82
\$150,000 to \$199,999	0.6	175,000	0.28	0.59
\$200,000 or more	0.1	200,000	0.25	0.51

Appendix C: City Water Investment Policy



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Adopted June, 2012
Orlando, Florida
80th Annual Meeting

CITY INVESTMENT PRIORITIES FOR WATER AND WASTEWATER INFRASTRUCTURE AND SERVICES

WHEREAS, local government investments in community water and wastewater systems have continually increased over the last 6 decades; and

WHEREAS, continual improvement in water quality has been achieved, such that the fires on the Cuyahoga River are a sad memory and no longer a current event; and

WHEREAS, the level and type of drinking water treatment has advanced to the point that waterborne infectious diseases have been dramatically reduced for several decades; and

WHEREAS, actuarial tables reflect progress in extending the lifetime of our citizens and this progress is partially due to improvements in water quality: females born in 1960 have a life expectancy of 73 years, and females born in 2008 have a life expectancy of 80 years; males born in 1960 have a life expectancy of 66 years, and males born in 2008 have a life expectancy of 75 years; and

WHEREAS, given the reality that over 90 percent of all spending on community water and wastewater systems, including compliance with Clean Water Act (CWA) and Safe Drinking Water Act (SDWA) federal unfunded mandates, is made by local governments; and

WHEREAS, Congress and the Administration has aggressively retreated from shared financial responsibility for achieving clean water goals; and

WHEREAS, the Administration has dramatically increased regulatory mandates that are implemented in a stove-pipe fashion with little or no regard for the cost burden to comply that is placed on local governments and ratepayers; and

WHEREAS, local government spending on community water and wastewater infrastructure and services faces unprecedented levels amounting to \$103 billion in 2009, and local government has no alternative but to finance capital investment in water and wastewater with long-term debt that now crowds the ability of local government to finance other worthy public projects; and

WHEREAS, local government long-term debt has grown from \$886 billion in 2000 to \$1.61 trillion in 2009, and cities and their respective ratepayers are ill prepared to afford additional unfunded water mandates,

NOW, THEREFORE, BE IT RESOLVED that the United States Conference of Mayors urges all city governments to establish as their highest priority the continued investment to sustain the currently operating community water and wastewater systems serving the public because it provides public benefits that sustain our quality of life, including: protecting public health; providing for support of local and metro economies, and protecting aquatic habitats; and,

BE IT FURTHER RESOLVED, that the imposition of new water and wastewater regulations divert resources from this higher priority and by so doing increase the likelihood that adequate reinvestment to maintain and sustain current water and wastewater systems is in jeopardy, and that system decay, service disruptions and the re-emergence of parasitic waterborne diseases must weigh heavily in any decision to impose new and additional water and/or wastewater unfunded mandates; and,

BE IT FURTHER RESOLVED, that the second most important priority of local government is to secure the future water supply by: protecting source water, including groundwater, groundwater recharge and sole source aquifers; and the water quality of estuaries, lakes, and rivers; eliminating water loss from failing pipes; reducing water use through conservation efforts; and increasing water supply via recycling, reuse, reclamation and desalination according to appropriate 'fit for use' strategies.

Appendix D:

Supporting EPA's Integrated Planning Policy



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Adopted June, 2012
Orlando, Florida
80th Annual Meeting

SUPPORTING EPA'S INTEGRATED PLANNING AND PERMITTING POLICY

WHEREAS, local governments provide the water and wastewater infrastructure that supplies clean and safe water; and

WHEREAS, in 2009 alone, local governments invested \$103 billion in water and wastewater infrastructure; and

WHEREAS, these infrastructure investments are the reason Americans enjoy some of the safest, cleanest, most affordable water in the world; and

WHEREAS, local governments do not have the financial capability to continue maintaining existing infrastructure that provides a high level of public health and environmental benefits, if they are forced at the same time to increase investments in new infrastructure that would provide fewer public health and environmental benefits; and

WHEREAS, even if a local government could obtain financing to invest in new infrastructure, the debt service will cause utility rates to rise beyond what is affordable for local citizens and rate-payers with a disproportionate impact on the poor and middle-class families; and

WHEREAS, U.S. EPA has recently recognized the financial capability limitations on local governments and families and has offered to work with local governments to make infrastructure investments more effective and affordable; and

WHEREAS, the Clean Water Act provides tools that can make local governments' substantial investments in environmental protection more effective and affordable, including use attainability analyses, variances, compliance schedules, and site-specific standards; and

WHEREAS, U.S. EPA agrees that it has the flexibility to utilize these tools to reduce regulatory burdens on local governments, but rarely employs them; and

WHEREAS, the ability to integrate planning and permitting of multiple water-related regulatory obligations, including obligations under the Clean Water Act and the Safe Drinking Water Act, would allow local governments to focus limited resources on actions that will provide the greatest environmental and public health benefits and may reduce the need to take future actions and incur future costs; and

WHEREAS, U.S. EPA agrees that it has the flexibility, when taking an enforcement action against a local government, to allow the local government to employ integrated planning to prioritize investment in Clean Water Act regulatory obligations that provide the greatest public health and environmental benefits; and

WHEREAS, U.S. EPA historically has taken the position that it does not have the flexibility to allow local governments to more effectively and affordably prioritize

investment in Clean Water Act regulatory obligations related to compliance with pre-1977 water quality standards except through initiation of administrative or judicial enforcement actions against those local governments; and

WHEREAS, Mayors do not believe that they should be subject to costly and inefficient enforcement actions before they can engage in integrated planning or prioritize investment in regulatory obligations that would result in greater human health and environmental benefits, notwithstanding the date a water quality standard was promulgated; and

WHEREAS, Mayors believe that the Clean Water Act specifically grants U.S. EPA the flexibility to allow local governments to more effectively and affordably prioritize investment in regulatory obligations related to compliance with pre-1977 water quality standards without initiation of administrative or judicial enforcement actions; and

WHEREAS, integrated planning and prioritizing investments with more substantial human health and environmental benefits is better supported through focusing local governments' limited resources on planning rather than on costly and inefficient enforcement proceedings,

NOW, THEREFORE, BE IT RESOLVED that The U.S. Conference of Mayors urges U.S. EPA to employ Clean Water Act tools to the fullest extent authorized to provide regulatory flexibility to local governments, urges EPA to reconsider its historic interpretation limiting its authority to allow integrated planning outside the enforcement context, and urges EPA to reconsider its position that integrated planning can only include Clean Water Act obligations and include Safe Drinking Water Act obligations as well; and

BE IT FURTHER RESOLVED that The U.S. Conference of Mayors urges U.S. EPA to cease treating local governments as polluters, and instead work with local governments as partners in

environmental and public health stewardship; and, only include Clean Water Act obligations and include Safe Drinking Water Act obligations as well; and

BE IT FURTHER RESOLVED The U.S. Conference of Mayors urges Congress to support the utilization of regulatory flexibility in lieu of the enforcement of unachievable standards by reappropriating or reprogramming funds from U.S. EPA's enforcement account to U.S. EPA's environmental programs and management account, for the purpose of carrying out use attainability analyses, and helping states develop variances, compliance schedules, and site-specific standards; and

BE IT FURTHER RESOLVED that The U.S. Conference of Mayors urges Congress to support integrated planning by reappropriating or reprogramming funds from U.S. EPA's enforcement account to U.S. EPA's state and tribal assistance grants account, for the purpose of reducing enforcement actions against local governments and increasing the capacity of state and local governments to support integrated planning through water quality plans developed under section 208 of the Clean Water Act; and

BE IT FURTHER RESOLVED that if the U.S. EPA continues to interpret the Clean Water Act to limit the use of integrated planning outside the enforcement context, then The U.S. Conference of Mayors urges Congress to enact a narrow amendment to the Clean Water Act to address this barrier by making it clear that, when integrated plans are utilized, water quality standards can be met over time, regardless of their promulgation date; and

BE IT FURTHER RESOLVED that if the U.S. EPA continues to interpret the law to preclude consideration of regulatory obligations under the Safe Drinking Water Act when developing an integrated plan that includes Clean Water Act obligations, then The U.S. Conference of Mayors urges Congress to enact a narrow amendment to the Clean Water Act and the Safe Drinking Water Act to address this barrier.

Appendix E: Resolution 43

REFORMING THE CLEAN WATER ACT SEWER OVERFLOW POLICY TO ACHIEVE SUSTAINABLE LONG-TERM GOALS



THE UNITED STATES CONFERENCE OF MAYORS

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REFORMING THE CLEAN WATER ACT SEWER OVERFLOW POLICY TO ACHIEVE SUSTAINABLE LONG-TERM GOALS

WHEREAS, approximately 772 cities in the United States will be required to establish legally binding Long-term Control Plans (LTCPs) to comply with the Federal Clean Water Act regulations involving Combined Sewer Overflows and Sanitary Sewer Overflows (CSO/SSO) over the current and next decade; and,

WHEREAS, city LTCPs will involve the establishment of new infrastructure to reduce the discharge of untreated sewage and/or untreated storm water into local receiving waters; and the new infrastructure options available for this purpose involve major capital investments and recurring increases in user charges (increased rates) for the construction of new treatment facilities or additional treatment capacity at existing facilities, new separate and/or combined sewer lines to convey wet weather overflows to the new treatment facilities, underground storage facilities, additional monitoring, reporting, and compliance costs, additional operations and maintenance costs to municipalities; and,

WHEREAS, local government involved in CSO/SSO enforcement actions to establish LTCPs, or those who enter into voluntary negotiations with the US EPA and state regulators have demonstrated that the US EPA is reluctant to exercise the flexibility they adopted in the US EPA CSO Control Policy concerning affordability, compliance schedules, volume and frequency of annual overflows necessary to comply with Clean Water Act water quality standards, and inclusion of green infrastructure as part of a city's LTCP; and,

WHEREAS, the capital cost cities bear to comply with CSO/SSO policy are among the single-most costly public works projects in their history, often a single CSO/SSO LTCP is equal to or greater than all combined long-term debt incurred for public expenditures in a single period of time; and,

WHEREAS, the latest available Bureau of the Census report for 2008 states that local government annual revenues were \$1.53 trillion, local government annual expenditures were \$1.59 trillion, and outstanding long-term debt of local government in 2008 exceeds \$1.51 trillion it is clear that current spending for public purposes and long-term debt are twice the amount of annual revenues, and additional unfunded federal mandates that are not absolutely necessary or are not associated with an emergency situation are ill-advised and clearly not sustainable; and,

WHEREAS, the environmental benefits associated with U.S. EPA's interpretation of requirements under the CSO/SSO Control Policy are often vague and not discernible, and arguably do not balance with local economic goals, and in many cases create a cost-disincentive for commerce and industry, thus adversely impacting jobs, local income, and the local tax revenues and income of ratepayers to support the investments required to finance the LTCPs.

NOW, THEREFORE, BE IT RESOLVED, that The U.S. Conference of Mayors urges Congress to amend the Clean Water Act to: create a true Federal/Local Partnership whereby the Federal government provides at least 50 percent of the cost of compliance with all regulations established under the Clean Water Act; and

BE IT FURTHER RESOLVED, that if Congress does not provide at least 50 percent of the costs, the Conference of Mayors urges Congress, the Environmental Protection Agency, and the Department of Justice to provide the following relief to communities as it relates to CSO/SSO LTCPs:

- Compliance schedules related to CSO/SSO LTCPs be no less than 30 years (unless a city voluntarily chooses to comply in less than 30 years) and up to 50 years so that local government can finance investments to achieve compliance without diverting financing for other public priorities, to avoid forcing local governments into unreasonable levels of long-term public debt and to prevent the levying of unaffordable rates upon poor and middle class households;
- Local government should be allowed to incorporate green infrastructure solutions in their LTCPs, and the EPA should encourage incorporation of green infrastructure in LTCPs in tangible ways that allow experimentation and flexibility on control criteria and should provide a clearinghouse of green infrastructure options for cities to choose from; further, cities should be encouraged to amend their LTCPs to adjust the mix of green and gray infrastructure when the opportunity arises to increase energy efficiency and permeability;
- EPA should not stipulate an arbitrary number of overflows, but rather focus on the objective of achieving real improvements to water quality that are affordable and sustainable. Thus, local governments should not be restricted to four or less wet weather overflow events per year if that is not required to meet water quality standards under the Clean Water Act;
- When determining the affordability of the LTCP solution that a city is required to implement, EPA and DOJ should use the two percent of Median Household Income as the total cost of sewer operation's ceiling, not the floor, and other factors such as the cost/benefit analysis and carbon footprint impacts;
- Cities should only be held responsible for complying with water quality standards based on a reasonable assessment of the proportion of degradation they actually contribute to water bodies.

**Adopted June 2011
Baltimore, Maryland**



STATEMENT OF

**THE HONORABLE RALPH BECKER
MAYOR, SALT LAKE CITY, UTAH**

**BEFORE THE
HOUSE COMMITTEE ON TRANSPORTATION AND
INFRASTRUCTURE**

**SUBCOMMITTEE ON WATER RESOURCES AND
ENVIRONMENT**

**JULY 25, 2012
WASHINGTON, DC**

Statement of

The Honorable Ralph Becker
Mayor, Salt Lake City, Utah

On behalf of the National League of Cities

Before the House Transportation and Infrastructure Committee,
Subcommittee on Water Resources and Environment

*“Integrated Planning and Permitting, Part 2: An Opportunity for EPA to
Provide Communities with Flexibility to Make Smart Investments in Water
Quality”*

July 25, 2012

Good morning, Chairman Gibbs, Ranking Member Bishop and Members of the Subcommittee. I am Ralph Becker, Mayor of Salt Lake City, Utah. I am here today on behalf of the National League of Cities (NLC), the oldest and largest organization representing cities and towns across America. I also serve on the Board of Directors for the U.S. Conference of Mayors. I appreciate the opportunity to share our perspective on the important role of clean water infrastructure investment in our communities and how the U.S. Environmental Protection Agency (EPA) and Congress can partner more effectively with local governments to make smart investments to protect water quality.

The availability of clean water is the backbone of a modern society and a livable community, and the nation’s water infrastructure systems are assets that help support the backbone by protecting public health, as well as the nation’s precious water resources. To the extent that America’s water infrastructure is properly maintained and can adequately meet the needs of our communities, it will help ensure the long-term vitality of our communities.

To help achieve this goal, cities need a modern policy framework and resources to invest in our nation’s water infrastructure systems and protect water quality. To that end, we applaud EPA for developing the Integrated Municipal Stormwater and Wastewater Planning Approach Framework (“Framework”), which demonstrates an awareness of the challenges local governments face in meeting Clean Water Act (CWA) requirements, as well as the conflicts they face in balancing environmental protection with economic feasibility. With regard to affordability, flexibility, and the use of the permitting process within the integrated planning framework, we can minimize these conflicts and pursue the best solutions for the environment and our nation’s communities, residents and businesses.

The integrated planning framework provides communities with the ability to develop compliance schedules and prioritize funding for the projects that have the greatest positive impact on water

quality to meet the goals of the CWA at a given time. By using an integrated approach, a community can produce a viable plan that selects from among several options to afford the greatest environmental benefit and address regulatory requirements, while reducing their financial impacts. To help achieve this goal, we ask you to work with EPA to implement the integrated planning framework as an affordable, flexible program that all communities, both large and small and urban and rural, have an equal opportunity to take advantage of and be successful in implementing. Additionally, to be effective, there must be consistency, guidance, and assistance from the various EPA regions for all communities pursuing this opportunity.

While addressing affordability and allowing for flexibility are potential important benefits of the Framework, we remain concerned about effective implementation and ensuring that the Framework is a useful tool for our communities and our constituents, who ultimately will pay for water quality and water infrastructure improvements. I will talk about these benefits and concerns, along with some recommendations, in the context of the challenges and opportunities that my city, Salt Lake City, faces in meeting CWA requirements, upgrading our aging infrastructure, and protecting our water resources. I believe our example is one that is mirrored in cities and towns nationwide.

Economic Benefits of Clean Water

In the desert, it seems poetically and ironically appropriate that the largest salt water lake in the western hemisphere and the world's fourth-largest terminal lake is sometimes erroneously called a "dead" lake, as no water flows out. Yet, the Great Salt Lake supports over \$1.3 billion in direct economic benefit annually. This includes \$1.1 billion from the industrial sector, largely mineral production (99 percent of all magnesium produced in the United States and 14 percent of the world supply); nearly \$136 million from recreation; and nearly \$57 million from brine shrimp aquaculture. The unique brine shrimp aquaculture industry represents 35 to 45 percent of the world supply of this important "fish food," essential to the world food supply, as it is one of the few food sources able to sustain fish fry through the first few weeks of the lifecycle at fish farms. In addition, about \$375 million in paychecks and 7,706 jobs can be traced to the lake.¹ And, with Morton Salt and other companies, the Great Salt Lake produces a lot of salt, too!

Given the importance of clean water and the economic benefits of the Great Salt Lake to our region, which are similar to those of other waterbodies to communities across the country, we as city leaders know that if we do not take care of our water resources, we will undermine the economic underpinnings of our cities, states and nation.

Salt Lake City is committed to investing in our water resources where the science, impacts, and benefits justify. We struggle, however, with the reality that each federal regulatory program and federal mandate is assessed on communities independent from other program requirements. These costs are all paid by the same people, our taxpayers, and it is an unfair burden. We agree therefore with our state that the EPA integrated planning framework should: 1) consider the affordability of costs to each resident, 2) allow us the flexibility to prioritize among all the needs and financial commitments of our community, and 3) provide a permit framework and timeline

¹ Economic Significance of the Great Salt Lake to the State of Utah, prepared by Bioeconomics, Inc. for the State of Utah and the Great Salt Lake Advisory Council, Jan. 2012

that reflects the 20-30 years it will require to implement both immediate remedies and “smart” planning and development upgrades to replace a century of existing infrastructure that was built without modern best water quality practices in mind.

Affordability of Meeting Clean Water Act Requirements

Salt Lake City is currently facing CWA requirements on the Great Salt Lake, Utah’s signature waterbody, as well as the Jordan River, which runs through the city. Initial cost estimates for meeting these regulations are staggering. The Great Salt Lake sees algae blooms from nutrients and contains legacy minerals that are both a concern to water quality. State regulators are gathering the scientific data to determine the right numeric standards and nutrient limits for the Great Salt Lake. Depending upon final regulatory limits, the state estimates over \$1.3 billion will be required of taxpayers statewide to address nutrients alone, with rate increases up to \$500 annually per household.² The state reports this may increase Salt Lake City sewer bills by as much as 140 percent.³ Additionally, the Jordan River faces pending organic sediment limits to improve dissolved oxygen. Again, at an estimated additional cost of \$10s to \$100s of millions, meeting this requirement could potentially raise each customer’s stormwater bill by 50 to 200 percent, or more.

Moreover, there are many emerging drinking water pollutants, such as chromium and pharmaceuticals products, that utilities, such as the Salt Lake City Department of Public Utilities, which handles wastewater, stormwater and drinking water, are increasingly being called on to monitor and remove. Although new treatment technologies are being developed that can address existing and emerging water quality challenges, including advanced treatment not contemplated by the CWA, they are extraordinarily expensive. This raises the question, “what can a community afford?”

Water rate and tax increases placed upon our residents to fund regulatory mandates should be reasonably affordable, and affordability within a community should be assessed based on impacts to the lowest economic level. Regulatory programs and permits with financial implications should only be imposed after taking into account a community’s potential or existing financial needs and commitments. In our view, increasing fees to accommodate regulatory requirements that do not provide the overall benefits desired are difficult to justify to financially strapped residents; that is precisely when government loses credibility.

The integrated planning framework will make a long-term plan of integrated stormwater and wastewater projects aimed at meeting the numerous CWA requirements more feasible. By allowing cities to prioritize all projects by first funding those that will provide the greatest overall benefit, we will be able to stretch our limited financial capacity. EPA guidance identifies 2 percent of median household income as the threshold for determining the affordability of rate or tax increases required to meet a regulatory requirement. This figure, however, often does not provide an accurate indicator of what all citizens across the economic spectrum of a community

² Statewide Nutrient Removal Cost Impact Study, prepared by CH2M Hill for the Utah Division of Water Quality, Oct. 2010

³ UDWQ POTW Nutrient Removal Cost Impacts Study: Analysis of Salt Lake City Water Reclamation Facility, prepared by CH2M Hill for the Utah Division of Water Quality, Sept. 2010

can afford. Therefore, we recommend and request that EPA consider the relative cost impact of meeting regulatory requirements on customers at the lower end of economic scale, where there simply is no discretionary income to absorb 50 to 200 percent utility rate increases. Additionally, EPA should include the macroeconomic impacts of all pending regulatory requirements in assessing the “affordability” of a specific regulatory goal.

Flexibility Through Permits

A flexible approach to integrated planning would allow communities to prioritize among all the needs and financial commitments of the community. EPA and the states can and should allow flexibility through the use of permits with regard to time, implementing best management practices, and coordinating and prioritizing projects between different regulatory programs.

With regard to permits, implementation of the integrated planning framework can most efficiently and effectively be achieved through the permitting process, rather than through the use of consent decrees. The states have the authority to implement long-term compliance schedules through the National Pollutant Discharge Elimination System (NPDES) permit program, and therefore judicial consent decrees and EPA administrative orders are unnecessary. We reiterate this concern because the Framework leaves the door open to consent decrees as a means of implementation.

We recommend and request the ability to extend permit cycles to longer timeframes to align with realistic and achievable goals of water quality improvements, which would allow longer term and lower rate impact to fund regulatory improvements. Expanding permit cycles would give cities time to make the right decisions, time to implement solutions, time to see the results, and if necessary, time to adjust implementation if we are not seeing the results we desire or if there is a better way of reaching our goal. And as cities’ fiscal recovery continues to lag, we need time to restore our local economies. Explicit provisions within the Framework that allow for more time to implement related regulatory projects under several separate but potentially related permits would also provide needed flexibility.

Related to this is the time and flexibility to implement best management practices, which may require a longer planning and implementation horizon, but may ultimately be more robust, effective, sustainable and affordable for our residents. For example, we know today that one of the most effective and recommended means for preventing stormwater pollution from entering our waterbodies is to construct and retrofit traditional “curb and gutter” with local drainage swales that can both filter water and reduce flooding. Yet, most of the entire country spent the last 50 years installing curb and gutter systems. It will take decades for communities to plan and install this more effective control in coordination with other street improvements. This kind of flexibility in allowing communities the time to study, plan, fund, and implement the best solutions, including structural and non-structural solutions, for the environment and water quality is essential to effective implementation and success of the Framework. Additionally, we encourage EPA to proactively publish and share integrated planning best management practices from across the country with all communities who are or are interested in pursuing an integrated planning approach.

Finally, with regard to regulatory program coordination, we believe the Framework administration should include pending drinking water treatment requirements under the Safe Drinking Water Act, in addition to sewer and stormwater treatment under the CWA. Our utility, with a responsibility for wastewater, stormwater and drinking water, takes a holistic approach to water management, and would benefit from a national policy framework that allows for a similar integrated and coordinated approach. We are hopeful this new framework will increase our opportunities to effectively integrate our master plan work.

Moving Forward – Funding for Water Infrastructure

Addressing the policy challenges is just one part of the equation to addressing our nation's water-related challenges. Addressing our water quality needs is important, and while substantial in its own right, is merely part of a myriad of funding priorities that all communities are struggling to meet. The lack of quality water infrastructure threatens local and regional economies, the environment, and public health and safety. Like other communities, 70 percent of Salt Lake City's water infrastructure is beyond its expected design life and is in need of substantial funding to address our existing system needs. We, therefore, call on you to support new financing mechanisms for funding water infrastructure projects.

NLC is a long-time supporter of the EPA Clean Water State Revolving Loan Fund (SRF). The Clean Water SRF, along with the Drinking Water SRF, are integral tools used by our communities for providing clean, drinkable, and swimmable water to the American people.

As you know, despite the fact that local governments fund 95 to 98 percent of all water and wastewater infrastructure investment, the needs in our communities continue to grow according to EPA surveys. The EPA's most recent Clean Watersheds Needs Survey indicates that the 20 year investment needed to upgrade our nation's total wastewater and stormwater management infrastructure to meet the water quality goals set in the CWA to be \$298.1 billion. Likewise, the most recent EPA Drinking Water Infrastructure Needs Survey and Assessment estimates the cost of drinking water infrastructure upgrades over a 20-year period to be \$334.8 billion. And, in our estimation, these investment levels are actually an underestimate given the advancing age of our infrastructure, the burden of unfunded federal regulatory mandates, and factors not yet known as a result of our changing climate.

Accordingly, local governments need a reliable, long-term source of substantial capital for municipal water infrastructure systems to help close the gap between current expenditures and anticipated needs to enhance and maintain critical water infrastructure in our communities. NLC supports water infrastructure funding through the SRF programs and other alternative mechanisms of financing water infrastructure improvements and investments, such as, for example, mechanisms that lower the cost of borrowing that will help leverage local funding, offer direct loans and loan guarantees from the federal government to cities, or remove the federal volume cap on tax-exempt bonds for water and wastewater infrastructure projects.

The United States marked the 20th century with breakthroughs and investment in water infrastructure that helped lift our nation to international prominence for the past 100 years. We ask you to lead and serve your people by addressing the underlying issue of aging infrastructure

and unmet infrastructure needs. This effort will set our local communities, our states, and country up to meet the challenges and opportunities of leading the world into the next century.

Conclusion

In closing, as we come up on the 40th Anniversary of the Clean Water Act, you should know that local governments remain committed to meeting the water infrastructure needs and water quality protection standards in our communities. We hope the federal government remains committed to being a full partner in this important endeavor. Because the nation's cities are working to improve aging infrastructure, meet federal regulatory requirements, create and retain jobs, and foster a climate of economic growth in our communities, a partnership with the federal government is essential. We look forward to working with you on a long-term solution to our nation's water infrastructure needs and with EPA to ensure that this integrated planning framework approach can help communities meet water quality protection standards in an affordable and flexible manner.

Thank you for the opportunity to speak on behalf of America's cities and towns. I look forward to your questions.

**Commissioner Todd Portune
Board of Commissioners
Hamilton County, Ohio
On Behalf of the "Perfect Storm" Communities Coalition**

**Testimony Before the U.S. House of Representatives
Water Resources and Environment Subcommittee
Committee on Transportation and Infrastructure**

**Oversight Hearing on
"Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities
with Flexibility to Make Smart Investments in Water Quality"
July 25, 2012**

Good morning, Chairman Gibbs, Ranking Member Bishop, and Members of the Subcommittee. My name is Todd Portune, and I serve as a Commissioner on the Hamilton County, Ohio Board of Commissioners. I am here today testifying on behalf of Hamilton County and the "Perfect Storm" Communities Coalition (Coalition). The Coalition is made up of communities dealing with the "perfect storm" of high unemployment, high home foreclosure rates, stagnant economic growth, and an exodus of business and industry, while being mandated to meet expensive CSO/SSO wet weather consent decrees and stormwater regulations.

The Coalition appreciates the Subcommittee holding this second oversight hearing on the current status of the Environmental Protection Agency's (EPA) release of their final Integrated Planning and Permitting Policy Framework (Framework). We believe the EPA must find a regulatory approach, consistent within the Clean Water Act (CWA) and existing regulations, that would provide communities like mine and those of the Coalition the flexibility we need to meet these challenges in a more affordable and cost-effective manner. We hold out hope that the Agency's final Framework can help us accomplish this goal.

During this Subcommittee's first oversight hearing on the draft Framework back in December 2011, Mr. Chairman, you specifically asked Ms. Nancy Stoner, Acting Administrator for the EPA Office of Water, if the EPA was open to using the pilot plan of 15-20 pilot communities in implementing the Framework proposed by the Coalition. Ms. Stoner answered, "Yes that is what I was talking about in terms of those who have already done a lot of thinking and planning. We are hoping those could be initial pilots for us, and others could learn from their successes." Ms. Stoner went on to say, "Our strategy that we are working on now would identify how we would like to work with communities through pilot projects and other means, as well." Finally, Mr. Chairman, you asked if EPA would have something moving forward by spring, to which Ms. Stoner replied, "Yes."

I, and the communities the Coalition represents, left that hearing encouraged that finally, after years of pleading, EPA finally understood. We were optimistic that a new policy framework would emerge, consistent with that commitment that worked to implement the standards of the CWA in a manner that was efficient, expedient and affordable.

Based on what I know today, EPA has not yet fulfilled its commitment. We still need a “Showcase Community” program that is a true demonstration program, rather than continuing the long-time practice of negotiating judicial decrees and leaving individual communities to “figure it out by themselves.”

Based on EPA’s announcements, we are not convinced that EPA has committed to using pilot demonstration communities in implementing the Framework. Under EPA’s Integrated Policy, and the most recent “Green Infrastructure Fact Sheets”, all of the financial burden and legal risk involved in developing an alternative framework remains on local communities. Under this approach Communities are given the choice of pursuing alternative approaches without direct financial, technical or related support from EPA. If a local community has access to money and expertise, and they get it right, EPA will then embrace them. If, however, they get it wrong, EPA and the U.S. Department of Justice (DOJ) will leave them subject to continued enforcement to “figure it out a second time.” This system of “forced local experiments” without federal funding is wasteful and inequitable. And, we know there is a better way – a third way – that does not ignore the mandates of the Clean Water Act, but also does not continue a “command and control” regulatory system that is inconsistent with the financial realities of America’s cities and towns.

Our Coalition has repeatedly requested that the EPA establish between 15-20 demonstration partnerships in each of the next five years in communities across the nation currently facing expensive mandated wet weather improvements. We want to see these partnerships transparently highlighted to show Congress and other like communities how the EPA and local communities can work together to implement flexible, practical and affordable wet weather solutions. By working with pilot communities, EPA could demonstrate how the use of new, innovative approaches can result in the same or better water quality results for a smaller investment of local taxpayer dollars.

Under the Coalition’s proposal, EPA would be leading the process, working in partnership with local communities, and lending EPA’s own significant body of resources and expertise to the effort. The end product of the Coalition’s proposal will be the development of the foundational data and results that can then be replicated across the nation with confidence of outcome and result. Anything less continues the current, unacceptable, process of fragmented, uncoordinated, differing approaches outcomes. There is a better way to implement a national policy, and I believe the Coalition’s proposal is that better way.

Yet, it has been my personal experience that EPA headquarters has refused to provide the direction necessary for their Regions to utilize pilot demonstration communities in implementing the Framework, applying a key component of transparency, accountability and fairness to this integrated approach and finding flexible, cost effective solutions to wet weather water quality conditions.

In fact, EPA headquarters continues to rely on their Regions and the respective state clean water agencies to implement the Framework in a rather reactive, tentative and ineffective way, rather than providing the leadership necessary to truly “roll up their sleeves” and proactively seek out

and work with communities that would benefit from such flexible, adaptive approaches to wet weather problems.

EPA may say they have been “working with” communities, such as Philadelphia, New York City and Cleveland, Ohio, on “innovative” agreements that incorporate alternative solutions such as green infrastructure. However, the hidden truth is that these communities have spent multiple millions of ratepayer dollars over the course of half a decade just to negotiate and find agreement with EPA on these innovations.” My community of Hamilton County has literally spent millions of dollars just on attorneys and consultants to “negotiate” a consent decree with the EPA and DOJ, and we still do not know if EPA will approve of our new plan using “innovative” approaches, nor do we yet believe that we will be able to afford the resulting agreement.

This approach is not particularly proactive, nor is it cost effective. EPA must commit to change the way they go about working with our communities in a way that ensures ratepayer funds are used for water quality improvements and not on attorneys and consultants fees in fighting with the agency and their lawyers to find agreement on “innovative” solutions.

As I stated in my testimony before this Subcommittee last December, the Coalition believes that Congress can ensure that innovative EPA policy changes, such as the Framework, are implemented in a meaningful and determined manner, and that they result in real, cost effective wet weather solutions for communities dealing with these challenges.

Congress should continue to provide oversight and direction to the EPA in promoting cost effective tools such as green infrastructure, pollutant trading, and other alternative measures that can provide innovative and affordable wet weather solutions. We believe by allowing communities to prioritize these alternative solutions through effective implementation of EPA’s Framework, we will ensure that practical, accountable and affordable remedies are approved and used to reduce and eliminate CSO violations.

The Coalition believes we are missing out on a rare and potentially enormous opportunity to limit or control the huge costs associated with wet weather CWA mandates. However, by not implementing the Framework in a manner that can ensure success in providing affordable and effective solutions that meet CWA goals, our communities will continue to become economically decimated by double-digit rate increases for expensive infrastructure investments.

CWA tools like integrated planning, adaptive management approaches and innovative watershed-based permits and pollution controls (such as pollutant trading) mentioned in the Framework will not be successfully implemented unless EPA is committed, from EPA headquarters out to the Regions, to make them work. We believe by addressing the implementation of the Framework through pilot demonstration communities, Congress can hold EPA accountable and ensure measurable long-term successes for these more flexible approaches. Additionally, communities that invest their scarce resources in developing integrated plans under the Framework must have a long-term commitment from EPA in order to ensure the regulatory certainty is in place to make these innovations work under the CWA. Investments in innovations such as adaptive management, green infrastructure and pollutant trading under the Framework can only be successful if given enough time to work, and EPA’s track record for regulatory

certainty does not give us much comfort under these circumstances unless pilot demonstration communities are identified and EPA is on record as approving such integrated plans for the long-term.

It is our recommendation that, for communities now operating under judicial or administrative consent decrees, the EPA and DOJ make a clear, written commitment upfront to update and to modify these decrees more frequently in the future so that their terms do not delay or hinder “regulatory flexibility” from truly taking effect.

I also want to provide the Subcommittee with a direct report from the “front lines” of our battle involving efforts to improve water quality while placing unprecedented financial burdens on American urban areas and towns. Bluntly, conditions on the front lines are terrible and we need your help.

The costs of using traditional methods to meet federal wet weather mandates are enormous, costing billions of dollars per community and leading to massive rate increases for local taxpayers. Under normal economic conditions, these mandates are not affordable; and in the current economy, incurring these costs will have long-term negative impacts. We must lessen the financial impact on communities by developing alternative wet weather management approaches that can achieve the same or better water quality results at a lower cost using locally-driven solutions that combine watershed approaches, green infrastructure, low impact development, grey infrastructure, and other innovative techniques to reduce wet weather impacts.

In my own community, we have cut our County budget by over 35% since 2007. Because of the recession, we have been forced to reduce our budget for all operations of the county – corrections, courts and law enforcement; public works projects of road, highway and bridge repairs; Auditor, Recorder, Treasurer, Coroner and all other facets of county government – by over \$100 million in five years, and eliminating over 1,500 jobs in the process. We can neither borrow money nor print money to balance our budget. We can only spend what we have and, consequently, have had to make do with less with no end in sight.

Yet, in the midst of this horror story, CSO/SSO mandate-driven Sewer District spending continues to increase. Since 2008 when the recession began, our bipartisan County Commission has been forced to increase Sewer District rates by over 50%. And our Sewer District, now facing hundreds of millions of Consent Decree mandated spending, projects another 18% in rate increases in the next two years. Since 2004, when our CSO/SSO consent decree was approved by the federal court, sewer rates have increased nine consecutive years cumulatively by more than 130%. In my community, few if any people have their incomes increase 10% per year or double every decade, the way that CSO/SSO consent decree-driven sewer rates increase.

The bizarre reality is that our constituents are now paying a huge percentage of their local public budgets to federally-mandated sewer programs, as compared to police, fire, welfare, roads, and other primary services. For example, the entire 2012 budget for all of Hamilton County, Ohio (\$207 million) is now far less than the 2012 budget of our Sewer District (about \$380 million, with \$202 million in capital and \$180 million in operations, of which \$90 million is payments on capital debt). Without significant federal relief, this trend will worsen as mandated build-outs continue and local

debt payment loads increase. Not only does mandated sewer work continue for decades, it is almost entirely locally funded. Those increased sewer rates have paid for more than \$400 million in consent decree mandated work thus far and we face nearly seven more years of increased spending to reach about \$1.1 billion (in 2006 dollars) of Phase 1 spending in a two phase consent decree mandated program. Phase 2 of the mandated work, which starts in 2018, is estimated to cost about \$2 billion more. With inflation, those amounts will only increase – even as local incomes stagnate or decrease and other public spending continues to be cut.

Where is the balance in this approach – or the fairness? What do I tell my constituents when they ask why I am forcing them to pay more for sewer repairs each year than I raise from all other revenue sources for all other county operations? What answer do I give them in explanation of why the federal government is laying the entire burden of federal clean water policy on local government? How do I justify raising sewer rates to unaffordable levels at the very same time that I cannot provide for police patrols; must close down jails; cannot fix my roads and bridges; and have endured 50% cuts in human services support at the same time that a new 40% demand for human services help has been created?

We are all for clean water, but where is the balance? And, the sad truth is when all is said and done, and we've spent all of this money, we still won't have clean water in our rivers. There remain types and sources of pollutants not covered by the current wave of EPA enforcement actions. When is that shoe going to drop? And when it does, who is going to pay for that?

As an elected official, I have a responsibility to my constituents that their sewer rates are well spent and return the best possible results for the dollar invested. Because of this current approach, we are working hard locally to identify an alternative to that investment to present to EPA that would return stormwater to area streams and use "green infrastructure" to control stormwater, with the goal of saving money in both construction and long-term operation and maintenance costs. We are open and desire this sustainable approach if it can save our ratepayers significant money. To achieve those savings will probably require EPA assistance, because these new approaches could be burdened with so many new requirements that they fail to result in cost savings. When my constituents are footing the entire bill, those are important considerations. Absent a compelling reason against using a "Green Build" approach, it is difficult if not impossible to justify the expenditures called for in our consent decree.

Across the nation, affected communities recognize the need to effectively manage their stormwater and improve water quality, particularly at a cost affordable to local taxpayers. We understand that ignoring wet weather issues, such as combined sewer overflows and stormwater runoff, can contribute to damaging floods, extensive erosion and the release of pollutants into water bodies. Yet, given the tremendous costs associated with traditional grey infrastructure (e.g. stormwater retention tunnels) to control wet weather events, communities must be allowed to prioritize investing their limited resources in the most cost-effective, accountable solutions that can result in the greatest immediate water quality benefits for local watersheds.

Some examples of these lower cost innovative techniques include:

- Reducing other sources of pollutants in the watershed that are more cost effective;
- Enhancement and restoration of riparian and in-stream aquatic habitats;

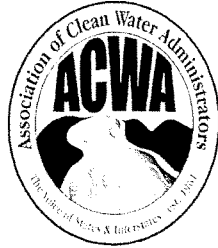
- Implementing green infrastructure technology to control stormwater runoff, such as green roofs, stormwater gardens and resurfacing areas with permeable materials; and
- Creek bed stabilization to reduce erosion by diverting high flows away from streambanks and controlling the slope of the creek bed.

EPA's current "siloed" policies do not encourage innovative, comprehensive watershed management techniques, as already authorized by the CWA in Section 1274. In fact, even as EPA is encouraging stormwater to be removed from combined sewers, it is moving ahead on another track to create new regulatory requirements for the further treatment of that stormwater. This risks an even longer "perfect storm" situation where, just as we address CSO issues, we may face new regulations and new enforcement for the very stormwater we are removing under judicial and administrative consent decrees.

The current EPA regulatory policies and enforcement-led approaches through consent decrees simply direct local communities to pay for massive, expensive and, in some instances, outdated concrete and steel approaches. In addition, the current enforcement policies are applied inconsistently and unevenly across the various EPA regions and focus too much on numbers of violations and levels of fines and money spent as a percentage of average household income as opposed to proactively helping communities implement common sense, cost-effective water quality improvements that can actually benefit water quality in local rivers and streams.

Hamilton County, Ohio and the "Perfect Storm" Communities Coalition looks forward to continuing to work with you, Mr. Chairman, and the Subcommittee, as well as with the EPA, in developing and ensuring the implementation of innovative, flexible approaches in meeting wet weather challenges, including the creation of demonstration communities that would showcase EPA's commitment to cost effective alternative approaches to expensive water quality wet weather challenges faced by communities like mine and those of our Coalition.

Thank you, Mr. Chairman, for the opportunity to provide testimony at today's hearing and I would stand for any questions from you and Members of the Subcommittee.



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July 25, 2012

***Written Testimony of Walter L. Baker, P.E.
President, Association of Clean Water Administrators
Director, Division of Water Quality,
Utah Department of Environmental Quality***

United States House of Representatives

***Committee on Transportation and Infrastructure
Subcommittee on Water Resources and Environment***

Regarding

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

Good morning, Chairman Gibbs, Ranking Member Bishop, and Members of the Subcommittee,

My name is Walt Baker. I am the Director of the Division of Water Quality at the Utah Department of Environmental Quality, and the President of the Association of Clean Water Administrators (ACWA). I have nearly 30 years of experience in implementing Clean Water Act (CWA) Programs.

The Association, now over a half century old, is the national, nonpartisan professional organization representing the State, Interstate, and Territorial water quality control officials

responsible for the implementation of surface water protection programs throughout the nation. In 46 states, we are the CWA National Pollutant Discharge Elimination System (NPDES) permitting authority. We are on the front lines of CWA monitoring, permitting, inspection, compliance, and enforcement across the country, and are dedicated to Congress' goal of restoring and maintaining the chemical, biological, and physical integrity of our nation's waters.

I am pleased to come before this Subcommittee again to present testimony on behalf of the Association regarding the U.S. Environmental Protection Agency's (EPA's) integrated planning initiative. I would like to reiterate our support for the concept of sequencing CWA requirements to allow a state or municipality to address those projects that will have the greatest impact on water quality first. Such sequencing is not a new concept, as many communities have developed such plans in the past without a formal national initiative. However, a wider embrace of sequencing is important in these times of economic hardship, as there is a greater need to maximize the effectiveness of limited infrastructure dollars. Integrated planning can, when executed properly, promote innovative solutions that make sense and deliver greater environmental results, such as promoting green infrastructure over grey.

When I testified in December 2011, EPA's draft integrated planning framework had not been released. At that time, I acknowledged support for prioritization of CWA obligations and for EPA's efforts. However, I also emphasized the need to ensure our main goal remains improvement of water quality, as well as the importance of a commitment to successful implementation by all involved parties.

Following the release of the draft framework in January 2012, ACWA members participated in five EPA-hosted stakeholder workshops, submitted written comments on the draft, and held calls with EPA to further discuss the draft. We appreciate the ability to provide feedback to EPA on this initiative through these avenues, and overall, EPA has been very receptive to state comments and questions. Since the framework was finalized

in June 2012, EPA continues to keep states engaged in implementation and is fostering open communication and collaboration.

At the workshops, it became apparent that states will take the primary role in reviewing and approving the municipalities' integrated plans. As the draft framework did not set forth details regarding our review and approval role, we sought further clarification as to what was expected of states and raised concerns regarding EPA's potential veto power over a plan with state approval. State, and municipal, time and resources are at a premium, and we need to ensure that when states review and approve a municipal plan, our determination will be respected by the Agency.

The final framework still does not elaborate on how states will execute their role. As we move forward, it will be important to cull guidance from experience to ensure this process moves forward productively. For example, in our dialogue with EPA, the role of states will likely be more fully fleshed out after the first integrated planning efforts occur. It is envisioned that states and EPA Regions and Headquarters will work closely together to plan development and review.

I would like to offer the following additional thoughts on EPA's final integrated planning framework and initiative as a whole:

- (1) In our comments on EPA's draft framework, we requested further explanation as to how affordability would be assessed. This was somewhat addressed in element four of the final framework, which directs municipalities to the "CSO Guidance for Financial Capability and Schedule Development" and other relevant tools. We urge EPA to develop and further its financial assessment resources. As cost will play a central role in the prioritization effort, this will be greatly beneficial to municipalities in developing the plans, as well as to states in reviewing the plans.
- (2) We are glad to see adaptive management concepts in the final framework, with respect to the implementation of a plan via a NPDES permit or enforcement action.

These plans will not be stagnant documents, but rather will need to evolve and be flexible over time.

- (3) While we do not wish to see water quality negatively impacted as a result of the use of integrated planning, the language in the framework indicating that EPA prohibits a lessening of standards in this process – which is critical – may cause problems for some municipalities developing and starting to implement a plan. Without a brief period of limited enforcement amnesty, municipalities that otherwise would like to attempt integrated planning may be hesitant to do so.
- (4) In undertaking an integrated planning effort, some regulated communities may seek to have certain CWA obligations removed in cases where they determine the return on completing a project would not be justified. EPA has consistently said that the integrated planning initiative is solely a matter of “when” CWA obligations will be addressed, and not a matter of “if” certain obligations will be addressed. According to EPA, all limitations will be met eventually. There may be a disconnect between the regulated community and regulators with respect to the possible outcomes from the planning process.
- (5) It will be important for EPA to work with states to lower the priority of some legacy activities so that state resources can be freed up for plan review and working with communities.
- (6) EPA has spoken of use attainability analyses (UAAs) being a potential tool to provide some relief to permittees considering integrated planning. However, given how difficult UAAs can be to accomplish in practice, we are not sure how frequently this tool will be used.
- (7) States previously expressed concerns regarding the limitations associated with the use of compliance schedules. Under CWA § 301(b)(1)(C), if a state water quality standard (WQS) was established pre-1977, then a compliance schedule is not allowed. However, if the WQS was established post-1977, a compliance schedule is allowed as long as the state clearly allows it in its WQS or implementing regulations. This was further enforced by the Environmental Appeals Board (EAB) in the case of *In The Matter of Star Kist Caribe* (3 E.A.D. 172, 175, 177 (1990)) and in a 2007 Memorandum by then Director of EPA's Office of Wastewater

Management Jim Hanlon. Recently, EPA has assured us that these precedents should not cause great problems with respect to the use of compliance schedules in permits for integrated planning, as there are few pre-1977 water quality standards remaining, and those that do exist tend to be narrative standards (e.g., color, odor and solids). Case specific issues may still arise, however, as I will note later with respect to Oklahoma.

- (8) We are already hearing that some regulated communities would like to include drinking water, wastewater, and perhaps even groundwater obligations within an integrated plan. As of now, EPA's framework does not include drinking water or groundwater. To ensure that integrated planning is truly integrated, and a meaningful and useful tool for a wide variety of municipalities, conversations may need to occur to allow a broader focus.
- (9) Clarification is needed as to whether integrated planning offers protection for regulated communities and states from third party enforcement actions. The absence of such protection might cause further hesitation on the part of a regulated community to undertake integrated planning. Transparency also will be paramount to reduce the risk of third party actions.

At this early stage, I cannot refer to many mature examples of integrated planning. In those examples that have surfaced, there has been an evident tilt towards integrated planning being more useful in enforcement actions than in permitting. EPA reports that approximately a half dozen ongoing negotiations are considering integrated planning, but details are not available. There has been significantly less activity in the permitting realm. One reason for this disparity is that enforcement tends to provide a level of flexibility that permits do not. However, it should be noted that the flexibility of enforcement actions may be countered by the increased transparency that permits offer.

We inquired our members on the status of integrated planning in their states and offer the following information, which highlights some early feedback on integrated planning:

- (1) In my own state of Utah, absent an imminent or actual enforcement action, municipalities do not see an urgency to seek refuge under integrated planning. We have been approached by one municipality to discuss integrated planning in a situation where the city may need to make significant upgrades to its drinking water system to address water quality problems. However, EPA's framework does not account for drinking water issues. The final framework only notes that "integrated plans may address source water protection efforts that protect surface water supplies." (Framework p. 3, Sect. III) Thus, we may entertain a process similar to integrated planning to address their concerns, but this would not technically fall under the integrated planning umbrella.
- (2) In Ohio, four entities have indicated a desire to implement the integrated planning process. Some have asked for a delay in their compliance schedules in order to prepare their plans. All of these entities are under enforcement orders, which would need to be modified if Ohio Environmental Protection Agency (OH EPA) chooses to accept their proposals, and two are under federal consent decrees, so EPA would take the lead in those cases.
- (3) In Oklahoma, no integrated planning requests have been received yet. The Department of Environmental Quality (DEQ) has been encouraging a small facility to consider integrated planning, but is still early in the process. Facilities are hesitant to approach integrated planning, and are waiting to see concrete examples and to receive assurance that EPA will not object after the state and facility have negotiated a plan. Further, a specific hurdle is a directive to DEQ from Region 6 limiting compliance schedules in NPDES permits to three years – essentially leaving OK with the enforcement avenue to implement integrated planning.
- (4) The New York Department of Environmental Conservation (DEC) has not received any integrated planning requests at this point. However, DEC has been working extensively with the NYC Department of Environmental Protection (DEP) to prioritize commitments and schedules under consent orders. One example of this is a recent modification to the NYC Combined Sewer Overflow (CSO) Consent Order. While this was not conducted under the auspices of integrated planning, DEC

believes it is a sterling example of the regulated and regulator coming to terms to advance water quality improvement at a reasonable pace.

- (5) Kansas Department of Health and Environment (KDHE) has not yet seen interest to engage in integrated planning. Interest may be tempered due to differing interpretations between Region 7 and EPA on the regulatory standards applicable to peak flow management and sanitary sewer overflows (SSOs). Without agreement on these topics, utilities may be reluctant to pursue an integrated planning approach.

Overall, the states have been largely supportive throughout the development of EPA's integrated planning framework and remain supportive of the general concept of allowing municipalities to sequence CWA requirements in ways most appropriate for a specific entity. However, as noted above, some of our concerns which will not be put to rest until we see actual case studies progress. Again, we encourage EPA to consider developing guiding principles based on early examples to assist others.

I would like to conclude by noting that the success of integrated planning hinges on the continued transparency, communication, and collaboration among all involved parties – municipalities, states, EPA Regions, and EPA Headquarters – throughout the entire plan development and implementation process. We look forward to continue working with EPA as this initiative proceeds.

Mr. Chairman, Members of the Subcommittee, I thank you for this opportunity to share ACWA's thoughts on EPA's integrated planning initiative. I will be happy to answer any questions that you may have.

* * * * *

**Testimony of Carter H. Strickland, Jr.
Commissioner, New York City Department of Environmental Protection
before the
House Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure**

**Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide
Communities with the Flexibility to Make Smart investments in Water Quality**

**2167 Rayburn House Office Building, Washington, D.C.
Wednesday, July 25, 2012**

Good morning, Chairman Gibbs, Ranking Member Bishop and Members of the Subcommittee. I am Carter Strickland, Commissioner of the New York City Department of Environmental Protection, or as we're known in New York City, "DEP." On behalf of Mayor Michael R. Bloomberg, thank you for the opportunity to testify on the U.S. Environmental Protection Agency's (EPA's) final integrated planning framework.

I had the pleasure of providing testimony before this subcommittee on this subject in December 2011. DEP also participated in workshops on EPA's Draft Framework on Integrated Planning and submitted written comments on February 29, 2012. We have reviewed the final framework issued in June and welcome this chance to offer additional testimony.

As EPA has noted, the final framework is not substantially different from the draft framework. DEP appreciates several points of clarification with respect to the role of States in integrated planning, as well as the encouragement of adaptive management and innovative approaches in addressing water quality. For example, water quality data for New York Harbor support the conclusion that combined sewer overflows (CSOs) are the dominant water quality issue, and that stormwater runoff is a lesser issue. While CSOs contribute slightly over 50% of total flow as compared to stormwater discharges and direct drainage (overland runoff), CSOs are estimated to contribute approximately 97% of total pathogen loading citywide. Accordingly, DEP has prioritized CSO abatement efforts. To that end, DEP has launched a \$2.4 billion green infrastructure program, and our recently renegotiated CSO consent order with the New York State Department of Environmental Conservation (NYSDEC) allows for elements of flexibility and adaptive management consistent with the principles embodied in the integrated planning framework. DEP is obligated under both Orders and SPDES Permits to undertake a variety of measures with respect to CSOs, such as the development of Long-Term Control Plans and the cleaning of our 136 miles of interceptors, which we just completed after a two-year effort. Clearly, for the framework to succeed it needs to recognize and, where appropriate, defer to state authorities, which are often the primary regulators.

We also appreciate the framework's explicit reference to and encouragement of the use of "Planning for Sustainability: A Handbook for Water and Wastewater Utilities" (Feb. 2012) in the integrated planning process, and presumably the earlier companion

documents, “Clean Water and Safe Drinking Water Infrastructure Sustainability Policy” (Sept. 2010) and “Attributes of Effectively Managed Utilities” (2009). These documents provide suggestions for programmatic areas and approaches that also match community goals, while appropriately recognizing that the details of those programs cannot be known in advance or dictated from any central authority, but rather must be developed by the operating entity. DEP supports a planning approach that would help municipalities prioritize infrastructure investments in order to maximize water quality benefits and encourage the use of innovative and sustainable approaches such as green infrastructure. The final framework includes additional language about increasing public involvement, and DEP values the role of community stakeholders in the planning framework.

A number of our comments and recommendations on the draft framework have been addressed and are consistent with the final framework, but since the level of detail in the framework has not changed dramatically, our initial questions regarding the specifics of how integrated planning would be implemented remain unanswered.

First, our written comments on the draft framework included potential legal risks. EPA stated that this approach will not be used to expand the reach of enforcement but that communities wishing to engage in integrated planning should self-report any challenges to EPA in advance. DEP suggested that this condition might limit municipalities’ interest in participating for fear of new enforcement by EPA or State regulators, or by citizen suits. DEP also sought clarification as to whether citizen suits would be barred so long as a utility is in compliance with a duly approved integrated plan. The final framework does not provide clarification with respect to these potential legal risks.

Second, the final framework for the integrated plan includes a discussion on financial capability and refers to the 1997 EPA document on CSO Guidance for Financial Capability Assessment and Schedule Development. However, DEP has conducted our own affordability assessment, and we have come to realize that the criteria outlined in this guidance document do not provide the complete story with respect to affordability concerns of both the agency and our rate payers.

For example, we found that the use of median household income (MHI) as an affordability indicator has several limitations for a city like New York (NYC), where household incomes are not distributed around the median and approximately 20 percent of the population is living below the federal poverty level. Furthermore, the New York City Center for Economic Opportunity has noted some of the deficiencies with current measures of poverty and developed an alternative poverty threshold measure based on methodology from the National Academy of Sciences (NAS). Based on this new threshold, a higher percentage of NYC residents are living in poverty than the federal poverty rate portrays. Our affordability study estimates twenty-five percent of NYC households (755,385 households) have wastewater and sewer costs that are two percent or more of their household income. With projected future rate increases, the burden on this vulnerable population will increase.

Therefore, our study recommends that residential affordability should consider income distribution, poverty, unemployment, and other economic burdens (e.g., the high cost of living in New York City), all of which inform the environmental justice issues that the federal government is rightly concerned about. And affordability must consider the cumulative impact of long-term debt, which means that utilities have rising debt service that will cause rates to increase for the foreseeable future. For example, this year DEP will spend 42% of our budget on \$1.6 billion in debt service. Each community is unique, so the framework should provide an opportunity to bring all relevant financial indicators and information to the table when considering affordability; and regulators must have a framework to receive and assess such information. We believe that the federal government has a special obligation to ease the burdens on municipalities, since municipal bonds and debt service have essentially replaced the federal grants that accompanied the enactment of the federal obligations in the Clean Water Act.

Third, EPA has clarified that the integrated planning framework scope is limited to wastewater and stormwater obligations and not drinking water, except in the case of source water protection. While we understand the rationale of separating Safe Drinking Water Act and Clean Water Act obligations, the reality for DEP and other utilities that provide both drinking water and wastewater services is that spending in one area affects the amount of funds available in the other. Mandates should consider all water obligations facing each community. For example, DEP has spent more than \$10 billion on drinking water programs in the last decade, much of it mandated. These investments affect our overall debt, annual debt service, and therefore the rates that our customers pay. On what basis can these investments be discounted? I note that EPA has committed to review its requirements for covering drinking water reservoirs under the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule), and has already deferred the implementation of the LT2 rule in New York City, which would require a \$1.6 billion concrete cover over a 90-acre reservoir – a project that our evidence shows would produce no public health benefit. The framework should build on these developments by considering past spending on Safe Drinking Water Act obligations, since we will be paying the debt service on those bonds for decades to come.

Fourth, the framework seeks to balance various mandates without recognizing the value of investments in non-mandated infrastructure. For example, on the wastewater side alone DEP has spent over \$10 billion in the past 10 years on programs, and has a multi-billion dollar future program to comply with mandates for CSOs and treatment plant upgrades, to launch programs to address stormwater discharges and nutrient loadings, and to plan for potential new requirements on total residual chlorine and other elements of the waste stream. Yet New Yorkers want and deserve non-mandated but still critical investments in programs to build storm sewers, replace storm and sanitary lines, and replace or maintain equipment according to prudent asset management review. There are still thousands of New Yorkers who lack sanitary sewers and tens of thousands more who lack storm sewers. Completing the full build-out of the storm and sanitary sewer system is an important priority for the City, but we have had to defer many of these projects until mandated work on treatment facilities is complete.

Fifth, the EPA's and Department of Justice's (DOJ's) enforcement actions must be consistent with the framework, and especially its consideration of state orders and permits as well as the general principle that the details of programs will be left to the operating agencies. Unfortunately, over the past few years the EPA and DOJ have been bypassing the permit process and "regulating by consent order" with provisions that have a stifling level of detail. The federal government is not in the business of operating utilities – not yet, anyway – and municipalities must have flexibility and discretion to make operational decisions within wide parameters.

In closing, we see integrated planning as a way for EPA, state regulators, and municipalities to sit down and prioritize these various water quality efforts so that there will be less "top-down decision making" and more collaboration and consensus among government agencies. This would vest discretion in local governments to invest scarce dollars in projects that meet critical needs and achieve the greatest public health benefits. The EPA's framework is a good start but it is far from sufficient to realize this vision.

Thank you for the opportunity to testify.



Testimony of:

George Hawkins

**General Manager
District of Columbia Water and Sewer Authority
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**Chair, Money Matters Task Force
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Washington, DC**

**Subcommittee on Water Resources and Environment
House Transportation and Infrastructure Committee
U.S. House of Representatives
July 25, 2012**

Introduction

Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is George Hawkins and I am the General Manager of the District of Columbia Water and Sewer Authority, now more commonly known as DC Water. I also serve as the Chair of the National Association of Clean Water Agencies' (NACWA) *Money Matters* Task Force, responsible for providing strategic guidance on new approaches to Clean Water Act (CWA) affordability. It is my pleasure to be testifying on NACWA's behalf today.

NACWA's primary mission is to advocate on behalf of the nation's clean water agencies, also known as publicly owned wastewater treatment works (POTWs), and the communities and ratepayers they serve. NACWA public agency members collectively treat approximately 80 percent of the nation's wastewater. The employees of these agencies are public servants and true environmentalists who ensure that the nation's waters are clean and safe, meeting the strict requirements of the CWA.

NACWA applauds the Subcommittee for holding this important hearing on the issue of the U.S. Environmental Protection Agency's (EPA) final *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (the framework). NACWA has played a leadership role in advocating for an integrated planning approach and is pleased to see EPA's continued leadership on the issue of prioritizing clean water investments to maximize water quality gains and minimize impacts on already burdened municipal budgets. EPA's framework not only promises to provide significant and much-needed flexibility for many communities facing significant water quality challenges, it symbolizes the recognition that it is time to do things differently.

Affordability Concerns and the Clean Water Act

While there is little doubt that the nation's water quality has improved as a result of the CWA, the command-and-control nature of the CWA has led to an accretion of costly regulations on the nation's communities and on the rate-paying residents and industries that foot the bill to ensure CWA compliance. The list is well-known – from wet weather-based requirements including combined sewer overflows, sanitary sewer overflows, and stormwater regulations – to specific pollutant-based requirements, such as nutrient limits and numerous other total maximum daily loads and effluent limitations. At the same time that regulations continue to expand, so too have enforcement actions. Nearly 100 cities across the country have signed off on sewer overflow consent decrees, with some costing individual communities billions of dollars – often to meet a single CWA requirement. Recently, municipal clean water agencies were also hit with a stringent reinterpretation of the Clean Air Act (CAA), which if not overturned by judicial or legislative action would force enormous costs on communities who have sewage sludge incinerators. Ideally, CAA and Safe Drinking Water Act obligations should also be considered in terms of the overall costs and affordability burdens that public agencies face.

Separate and apart from regulatory requirements, POTWs face a looming crisis with their aging network of pipes and systems that EPA estimates will cost between \$300-500 billion over the next twenty years. Communities are seeing the writing on the wall that the current prescription of rate increases and expanding municipal debt loads are not sustainable. Simply stated, absent a new approach to regulatory compliance, the future of maintaining – let alone adding to – the record of

water quality gains is at risk. POTWs are also seeing a troubling disconnect between the growing cost of additional regulatory requirements in order to achieve ever-decreasing water quality gains. In other words, communities are being forced to invest more but are increasingly getting less return on these investments. With ratepayers wanting to see the greatest bang for the buck the argument for rate increases grows more difficult as the benefits to the ratepayer become less clear.

EPA's Integrated Planning Framework

NACWA has consistently played a leadership role in advocating for an integrated planning approach, including longstanding and related efforts over the past decades to advance a holistic watershed approach and to have EPA review and develop a more flexible and realistic approach to community affordability and financial capability determinations under the CWA. NACWA launched its *Money Matters... Smarter Investment to Advance Clean Water™* campaign two years ago to shed light on the growing financial and compliance challenges posed by CWA regulations and call for an integrated approach based on prioritizing these competing requirements to achieve maximum water quality benefit.

NACWA commends EPA for producing an integrated planning framework that provides a strong foundation for new and continued discussions between clean water utilities and the government, whether state or federal, on how best to sequence their clean water investments. As stated earlier, the framework represents a recognition on the part of the EPA that the current approach to CWA compliance is not working for communities and that more flexibility, without sacrificing water quality, is necessary.

Improved flexibility and adaptability could help alleviate the massive burden placed upon DC Water and its ratepayers with respect to two of our largest capital projects.

The first initiative is our \$2.6 billion Clean Rivers Project, aimed at controlling combined sewer overflows (CSOs) into the Anacostia and Potomac Rivers and Rock Creek. This enormous project is the result of a consent decree entered into with EPA, the United States Department of Justice, DC Water and the Government of the District of Columbia in 2005. Under the consent decree, DC Water has 20 years to construct massive conveyance and storage tunnels to capture rainwater and sewage during rain events, releasing it to our Blue Plains Advanced Wastewater Treatment Plant after storms subside. The \$1.8 billion Anacostia River portion of this project is already underway, and will eliminate 98 percent of the combined sewer overflows into the river.

Since the negotiation of our 2005 consent decree, EPA has endorsed green infrastructure approaches such as green roofs, bioswales, pervious pavement, and water quality catch basins to address CSOs in jurisdictions similar to the District of Columbia. Further, more recent EPA consent decrees have provided jurisdictions with 25 years to address CSOs instead of the 20 years allowed under the District's agreement. With that in mind, we are hopeful that the integrated planning framework may be an appropriate vehicle to help provide DC Water and EPA with additional flexibility to adapt our consent decree to allow for a rigorous pilot of green infrastructure as an alternative to the costly and large Potomac and Rock Creek tunnel projects mandated in the consent decree. If successful, this

alternative could reduce project costs and result in green job creation, improved air quality, enhanced green spaces, and expanded wildlife habitats.

Our second mammoth water quality initiative, also mandated, is the \$950 million Enhanced Nutrient Removal Project. For decades, DC Water has been a leader in restoring the Potomac River and Chesapeake Bay by improving the performance and treatment capabilities of the 370 million-gallon-per-day Blue Plains plant. In fact, DC Water was the only entity to achieve the 2010 voluntary cleanup goals for Chesapeake Bay nitrogen removal and met the voluntary reduction goals of 2000 and 1987 as well.

In 2009, the EPA issued a National Pollutant Discharge Elimination System (NPDES) Permit to DC Water requiring a reduction in effluent nitrogen to 4.4 million pounds per year. The new permit required DC Water to design and construct nitrogen removal facilities to the limit of conventional treatment technology. The project includes more than 40 million gallons of additional new anoxic reactor capacity for nitrogen removal, new post-aeration facilities, an 890 million gallon-per-day lift station, new channels and conveyance structures, demolition of existing buildings, addition of a protective sea wall and modifications to the existing facilities to enhance performance.

DC Water is proud of our achievements to date in reducing nutrients discharged from our facility to the Chesapeake Bay. However, as permit requirements imposed on point sources like Blue Plains become more stringent, it is important to recognize the diminishing return on investment large capital projects such as the Enhance Nutrient Removal Project provide. Prior permits issued by EPA reduced nitrogen from Blue Plains by 58 percent at a cost of approximately \$15 per pound of nitrogen reduced. Our new permit requires a 31 percent nitrogen reduction at a cost of approximately \$476 per pound of nitrogen reduced. It is important to keep in mind that wastewater treatment facilities such as Blue Plains account for less than 20 percent of the overall nitrogen load to the Chesapeake Bay.

It is clear that the trajectory of these regulatory requirements is unsustainable in the long term. We are hopeful that EPA's integrated planning framework will allow DC Water to prioritize its future capital projects to ensure that limited ratepayer dollars are used in the most effective manner to achieve the maximum water quality benefits. Absent significant federal funding, projects such as Enhanced Nitrogen Removal place an impactful burden on the small pool of ratepayers in the District of Columbia, many of whom are low income.

NACWA's Focus

While the final framework clearly is an important step toward realizing the goals of the Association's *Money Matters* . . . *Smarter Investment to Advance Clean Water*[™] campaign, key questions remain as to the extent to which the framework will prove to offer the type of broad-based relief many in the clean water community are seeking.

The issue of affordability remains one of NACWA's top concerns. We will be looking closely at how this framework is implemented to assess how well it is actually saving communities and ratepayers money. We strongly believe that we can achieve water quality goals with fewer resources by using

innovative approaches and addressing the most challenging problems first. In addition, NACWA will be focused on making sure that all communities, not just those having faced or now facing enforcement actions, can use an integrated planning approach to meet their permit obligations. The true success of this approach will only occur through the normal course of the NPDES program and not through a court-driven consent decree process.

Congress' Role

NACWA believes that Congress has an important role in ensuring the integrated planning approach is more than just a symbolic acknowledgment of the need for a new approach – Congress must help communities by encouraging broad implementation throughout the country and allowing flexible permit terms.

First, NACWA urges Congress to provide initial financial support for the development of municipal plans in pilot communities across the country. Developing an integrated plan can be a timely and resource-intensive process, and federal support can help cash-strapped communities seriously consider this new model for meeting CWA obligations. In addition, federally-funded pilot communities may report back to Congress on the cost-savings and environmental benefits they experienced under an integrated plan. Seeing wide-spread success, this may incentivize other communities around the country to embrace this approach as well. As part of this pilot effort, we suggest providing limited resources to States for them to undertake the necessary processes they need to work with communities interested in developing integrated plans.

Second, Congress should allow for NPDES permit terms to be extended up to 25 years for a community with an approved integrated plan. By allowing extended permit terms, communities who undertake the resource-intensive process of developing an integrated plan would have some assurance and certainty that their clean water investments will be secure for longer than five years. One of the drivers for seeking relief through a consent decree process is that the terms of a consent decree can extend to as many as twenty-five years. The NPDES permit process should provide the same degree of certainty. This should not be interpreted as a regulatory rollback as the core of this new initiative rests in the development of viable and prioritized compliance schedules with clear benchmarks/milestones for meeting the array of prioritized requirements.

Furthermore, EPA's framework encourages the use of innovative, cost-saving tools such as green infrastructure and water quality trading as part of a community's an integrated plan. These tools need time to develop and mature, and will not be considered viable options if only given a few years to employ.

Looking to the Future

EPA's integrated planning initiative is a sign of the increasing awareness that the CWA is now forty years old and that existing interpretations of the Act, and perhaps the Act itself, are not ideally suited to meeting the needs of the 21st century. Often and for good reasons, discussions regarding clean water agencies focus on specific regulatory compliance issues under the CWA or how to best fund or finance an aging network of pipes and systems. NACWA hopes we can continue to work with this Subcommittee to consider targeted changes to the CWA – for example, changes to help communities

better manage wet weather issues - so that it can effectively address 21st century challenges and ensure another four decades of water quality improvement and unrivaled utility leadership.

NACWA has also long supported the creation of a dedicated source of funding for wastewater infrastructure investments to ensure that communities can meet their obligations under the Clean Water Act (CWA). A Clean Water Trust Fund, similar to those that finance highways and airports, would provide a federal contribution to supplement existing local and state revenue to address the enormous backlog of clean water projects and help communities meet CWA unfunded mandates. It would also spur efficiencies in utility management, new green technologies and research, and enhance fisheries. The time has come to embrace a 21st century approach to water that helps ensure community health and safety.

Conclusion

The CWA is at a crossroads. EPA's integrated planning framework offers a unique opportunity to put the federal, state and local partnership back on track to help meet our communities' water quality needs while addressing real affordability concerns. The Subcommittee can play a vital role by following this effort closely and urging EPA to stay on the right course to encourage municipalities to take advantage of the framework.

NACWA recognizes the Subcommittee's concerns with the growing cost of compliance with CWA regulations — no entity is more concerned about this than NACWA — but we remain optimistic that EPA can advance its framework to address our mutual concerns. NACWA has also drafted legislation for a viable integrated planning approach that includes language to extend permit terms if necessary as well as an appropriations request for funding pilots, which we stand ready to advance with your help at the appropriate time if necessary. We look forward to continuing to work with the Subcommittee on this and other important clean water initiatives.

Thank you for the opportunity to appear before you today, I look forward to any questions the Subcommittee may have regarding my testimony.

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

TESTIMONY OF

ALAN VICORY, Jr. P.E., BCEE

VICE CHAIR, GOVERNMENT AFFAIRS COMMITTEE, WATER ENVIRONMENT FEDERATION



BEFORE THE

WATER RESOURCES AND ENVIRONMENT SUBCOMMITTEE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

U.S. HOUSE OF REPRESENTATIVES

JULY 25, 2012

Water Environment Federation
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Good morning, Chairman Gibbs and Subcommittee Members. My name is Alan Vicory and I serve as Vice Chair of the Water Environment Federation (WEF) Government Affairs Committee. I am a Principal with Stantec, a professional engineering and architecture firm. Prior to joining Stantec last year, I served for 24 years as the Executive Director of the Ohio River Valley Water Sanitation Commission [ORSANCO], an interstate commission representing eight states formed to abate and control water pollution in the basin. My testimony today is on behalf of the Water Environment Federation.

WEF's passion is to preserve and enhance the water environment to support clean and safe water, both in the United States and globally.¹ On behalf of WEF, thank you for the opportunity to testify about EPA's integrated planning framework.

Local governments have made tremendous investments to improve water quality and achieve Clean Water Act (CWA) compliance over the last 40 years with remarkable success. They have worked tirelessly to provide an essential public service that is critical to safeguarding public health and maintaining our quality of life. Faced with a struggling economy and multi-year declines in revenues, now more than ever it is imperative that local governments invest limited resources where they will have the most significant environmental and public health impact.

WEF supports EPA's recently-released *Clean Water Act (CWA) Integrated Planning Framework* as a much needed first step to provide greater flexibility to local governments faced with multiple water mandates. WEF has been engaged with EPA throughout the development of the framework. WEF fully participated in EPA's five workshops earlier this year to review and comment on their draft framework with one of our Board members and a senior representative from our Government Affairs Committee contributing to the facilitated discussions at each workshop. As WEF participants noted at the workshops, EPA's approach is consistent with WEF's long-standing Policy on Water Quality which emphasizes the following on priority setting:

¹ Founded in 1928, the Water Environment Federation (WEF) is a not-for-profit technical and educational organization of 36,000 individual members and 75 affiliated Member Associations representing water quality professionals around the world. WEF members, Member Associations and staff proudly work to achieve our mission to provide bold leadership, champion innovation, connect water professionals, and leverage knowledge to support clean and safe water worldwide.

The Water Environment Federation supports a priority setting process allowing governments and watershed managers enhanced flexibility in scheduling and standard-setting within the context of economic, technical, and social capabilities.

A priority setting framework must support water quality managers in using appropriate data and tools, promoting inclusive resource protection, conducting economic and risk analyses, considering cross-media impacts, and accounting for regional growth. Water quality priorities and solutions must be established regionally to best address water quality impairment from local and outside sources. The general public should collaborate in priority setting with engineers, scientists, and other experts to ensure long-term support for and implementation of water quality programs.

We recommended that the final framework explicitly include adaptive management, which it now does. We stressed the important role of EPA Regions and States in actual implementation, which EPA HQ does recognize and support. We also recommended more focus on affordability and ability-to-pay and finance at the local level which we believe continues to need more attention and care as implementation of the final framework moves forward.

According to EPA, the framework will set the stage to allow communities to “identify a prioritized critical path to achieving the water quality objectives of the CWA by identifying efficiencies in implementing overlapping and competing requirements that arise from separate wastewater and stormwater projects, including capital investments and operation and maintenance requirements.” By utilizing the framework and developing an integrated plan, WEF is hopeful that local governments will be given the flexibility to balance the need for investments in asset management and aging infrastructure with other water-related requirements at a pace that is sustainable and affordable.

The framework outlines a common-sense approach to water program management through planning that is locally-driven, flexible, and voluntary and encourages innovative solutions such as green infrastructure to address current challenges to water quality and supply. Economic and risk analyses, cross-media impacts, and regional growth will all be considered as municipalities and regions define their best plans to implement water programs and requirements. The final framework also includes an adaptive management process that will allow permits and

enforcement orders to be reopened if circumstances or technologies change to provide the opportunity to identify, evaluate, and select new projects, incorporate innovative solutions and make changes to ongoing projects and implementation schedules.

As we move into the implementation phase, we need to ensure that this flexibility is available to all municipalities and utilities; plans should be reviewed and approved as promptly as possible to provide relief to local governments. To accomplish this, EPA should shift the focus from enforcement to permitting and provide states with funding and technical assistance to fully implement the framework and ensure that any local government that wants to submit an integrated plan is not turned away. EPA should encourage all states to adopt regulatory provisions allowing long-term compliance schedules in permits. Integrated planning can also be incorporated into sequential permits.

Regulators should strive to use non-judicial implementation mechanisms with enforcement considered a last resort. Local governments should be treated as partner agencies rather than polluters and adversaries. Regulators should eliminate or minimize the imposition of fines and penalties. Enforcement and imposition of fines create a counter-productive stigma at a time when local governments need public support to raise rates and are facing ever increasing public perception challenges.

The framework should be viewed as the beginning and not the end. As I already noted, we believe the framework does not go far enough with regard to affordability and financial capability. EPA must be open to considering other economic indicators and factors that better assess the true impact of water rates on customers and particularly lower income households.

Questions still remain about how the prioritization and sequencing process will work and how the overall metrics or standards to approve a successful integrated plan will be determined. Local governments should be provided substantial discretion to develop metrics for measuring environmental and public health benefits and for selecting and prioritizing implementation projects. The overall goal of integrated planning and prioritization should be to achieve continuous water quality improvement at the lowest possible cost per increment of water quality

improvement. The metrics for success need to shift from overflow volume reduction to water quality based cost-benefit analysis. Metrics such as cost per gallon of overflow volume reduced or cost per pound of nutrients removed would still be important, but the focus would be on direct investment in only those improvements that have measurable and tangible benefits to water quality improvement (and thereby public health). Prioritization would be based upon long-term water quality benefits, and the rate at which they are achieved, rather than the rate of infrastructure expenditures.

EPA needs to be a champion of innovation and should not only remove obstacles but should actively encourage and continuously support the ongoing evaluation of new technologies and innovation to meet CWA requirements.

WEF stands ready to work with our members to help support implementation of this framework. We hosted a well-attended webinar on the final EPA framework just after its June release where senior EPA managers presented and explained the final framework and responded to questions and concerns. As implementation proceeds, WEF will pursue educational and training opportunities including considering the needs of small and medium sized communities who may be interested in this integrated approach. We recommend that Congress and EPA also consider the needs of smaller communities, including what may be appropriate and doable in terms of providing technical and other assistance to those interested in pursuing this approach.

As we embark upon the next 40 years of the CWA, let us strive to use this framework as a spring board for collaboration and partnership to find the best, most innovative and cost-effective solutions to improve water quality improvement without saddling our communities with unnecessary debt and imposing a financial burden that is unsustainable. WEF commends EPA for listening to local governments and we look forward to working with EPA, municipalities, states and the general public on implementation to realize our shared goals of protecting human health and improving water quality.

Thank you for the opportunity to testify. I would be happy to answer any questions you may have.

TESTIMONY OF NANCY K. STONER
ACTING ASSISTANT ADMINISTRATOR
OFFICE OF WATER
U.S. ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE
SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
UNITED STATES HOUSE OF REPRESENTATIVES

JULY 25, 2012

Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the U.S. Environmental Protection Agency (EPA)'s efforts to achieve better water quality improvements through integrated municipal stormwater and wastewater planning and innovative approaches for meeting our infrastructure challenges.

Introduction

The Nation has come a long way in improving water quality, public health and the environment since Congress enacted the Clean Water Act (CWA) almost 40 years ago. We have improved water quality and increased public health protection in streams, lakes, bays, and other waters nationwide. However, significant water pollution challenges remain. We face difficult and expensive infrastructure and engineering challenges in providing advanced treatment for nutrients and controlling combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), and stormwater.

Population growth, increases in impervious surfaces, aging infrastructure, climate change, and the current economic challenges are stressing implementation of infrastructure and programs needed to fully attain CWA goals. Many of our state and local government partners find themselves facing difficult financial conditions. Their ability to finance improvements by raising revenues or issuing bonds has declined during the economic downturn and ongoing economic recovery. We recognize the challenging

financial conditions that many municipalities are facing, and the EPA is working with states and local governments to develop and implement new approaches that will achieve water quality and human health goals more cost effectively and sustain our Nation's essential water infrastructure while creating jobs and strengthening the economy. The EPA's priorities for sustainable water infrastructure are embodied in our *Clean Water and Safe Drinking Water Infrastructure Sustainability Policy* issued in October 2010. Two key elements of this policy are support for integrated planning for water infrastructure investments and wider deployment of innovative approaches such as "green infrastructure", which I will focus on today.

Integrated Planning

In the past, the EPA, states, and municipalities have often focused on each CWA requirement individually without full consideration of all CWA obligations or how various water quality investments can be coordinated and managed as a single effort. This uncoordinated approach may have the unintended consequence of constraining a municipality from addressing its most serious water quality issues first.

We believe a new commitment to integrated water quality planning and management offers municipalities an opportunity to meet CWA requirements in a more effective manner and in a way that achieves the highest priority goals more quickly. As Assistant Administrator Giles will elaborate upon, the EPA recently reached settlement agreements with several cities that have begun to embrace integrated planning approaches. These agreements demonstrate how we can help communities across America meet a range of clean water goals more efficiently while helping to create jobs, and strengthen our economy.

To further encourage this trend, on October 27, 2011, Assistant Administrator Cynthia Giles and I signed a memorandum to the EPA Regions that expresses the agency's commitment to integrated approaches to managing municipal stormwater and wastewater. The integrated approach provides interested municipalities with an opportunity to develop a comprehensive plan that balances competing CWA requirements and allows municipalities to focus their resources on the most pressing public health and environmental protection issues. In the memorandum, the EPA committed to developing an integrated planning approach framework to help explain how the agency will work with state and local governments.

Earlier this year, we made a draft of the framework publicly available and held a series of public workshops around the country to gather input from states, municipalities, and other stakeholders on the integrated approach. On June 5, 2012, after making adjustments to reflect what we learned from public input, we signed a memorandum to the EPA Regions that transmitted the final framework. A copy of the final framework is attached to my testimony.

The framework outlines the principles we will follow in implementing the integrated approach. It also provides guidance on developing and implementing effective integrated plans by describing the elements that the EPA believes an integrated plan should generally address, including:

- A description of the water quality, human health and other issues;
- A description of their wastewater and stormwater systems;
- A process for stakeholder input;
- A process for identifying, evaluating and selecting alternatives and proposing implementing schedules;
- A process for measuring success; and

- A process for adapting plans to address changing circumstances.

The framework explains that the integrated approach is optional, and the responsibility to develop an integrated plan rests with municipalities. Once a municipality has developed a plan, the EPA and/or the state will work with the municipality to develop appropriate implementation requirements and schedules. The integrated planning approach, however, will not lower existing regulatory standards. Rather, the approach will take advantage of the flexibilities in existing EPA regulations, policies and guidance to allow municipalities to sequence implementation of their CWA obligations to protect water quality and public health more cost effectively.

For example, the EPA's existing regulations and policies provide the EPA and states flexibility to evaluate a municipality's financial capability in tough economic times and to set appropriate compliance schedules, allow for implementing innovative solutions, and sequence critical wastewater and stormwater capital projects and operation and maintenance-related work in a way that ensures human health and environmental protection. We recognize that such an integrated approach will necessarily involve balancing all of a municipality's competing CWA priorities with the environmental and public health objectives of the CWA. In doing so, we must be diligent in ensuring that a municipality be positioned to address its most pressing water quality and public health issues first.

Green Infrastructure and Sustainable Practices

A second key goal of our 2010 *Clean Water and Safe Drinking Water Infrastructure Sustainability* policy is to promote the wider application of green infrastructure practices for management of municipal stormwater. The EPA has strongly encouraged these green infrastructure approaches for several years. Some cities and communities have implemented green infrastructure approaches and are starting to see that the value of such projects goes beyond protecting water resources.

On a regional scale, green infrastructure consists of a network of open spaces and natural areas (such as forested areas, floodplains and wetlands) that improve water quality while providing recreational opportunities and wildlife habitat. On the local scale, green infrastructure consists of site-specific management practices, such as rain gardens, porous pavements, green roofs and cisterns, that are designed to maintain natural hydrologic functions by absorbing and infiltrating precipitation where it falls, and by returning it to the atmosphere via plants.

Green infrastructure has a number of other environmental and economic benefits in addition to improving water quality, including recharge of ground water and surface water supplies, cleaner air, reduced urban temperatures, reduced energy demand, carbon sequestration, and reduced flooding. It can also provide community benefits, such as improved aesthetics, improved human health, and additional recreational and wildlife areas. A key benefit of green infrastructure approaches is potential cost savings associated with lower capital costs compared to building large stormwater collection and conveyance systems.

The EPA is working with other federal agencies to develop and promote the wider adoption of green infrastructure practices. For example, the EPA has recently established a website providing a link to a wide range of information sources related to green infrastructure, such as a series of six factsheets on incorporating green infrastructure measures into wet weather programs. The EPA is also providing technical assistance to 17 communities in 16 states to help protect and restore water quality with green infrastructure. And lastly, the integrated planning framework is a key mechanism that communities can use to fit green infrastructure into a larger plan for wastewater management.

The EPA is also encouraging municipalities to pursue other innovative and sustainable approaches to stormwater and wastewater management which can include the expanded use of “asset management” that provides a better basis for decision making on a utility-wide basis and supports the long-term financial sustainability of the municipality. “Planning for Sustainability: A Handbook for Water and Wastewater Utilities,” released in February 2012¹ was recently created to assist municipalities with asset management. Both asset management and green infrastructure practices complement the integrated infrastructure planning that we are promoting.

Conclusion

As we move forward with the integrated planning approach, the EPA is committed to continuing to work closely with states, municipalities, environmental groups and the public. The EPA and the Association of Clean Water Administrators (ACWA) recently participated in a well attended webinar hosted by the Water Environment Federation. We have also had numerous calls with representatives of key organizations including ACWA, the Conference of Mayors and others to explain the approach. We will also recognize municipal leaders who come forward with an integrated plan and highlight key aspects of the approach.

We at the EPA look forward to working with this Subcommittee, our state colleagues, municipalities, and the many other partners, stakeholders, and citizens to implement the integrated planning approach. We are committed to improvements in wastewater management and moving toward full attainment of water quality and human health goals. Thank you again for inviting me to testify and Cynthia or I would be happy to respond to any questions you may have.

¹ The February, 2012 Handbook is available at <http://water.epa.gov/infrastructure/sustain/upload/EPA-s-Planning-for-Sustainability-Handbook.pdf>





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

1003 - 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 PlanDefining 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/ownm595.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/fnlsup-hermnem.pdf>.

DONNA F. EDWARDS
4TH DISTRICT, MARYLAND
HOUSE COMMITTEE ON
TRANSPORTATION AND INFRASTRUCTURE
HOUSE COMMITTEE ON
SCIENCE AND TECHNOLOGY

Congress of the United States
House of Representatives
Washington, DC 20515-2004

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August 7, 2012

The Honorable Nancy Stoner
Assistant Administrator for Water
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

The Honorable Cynthia Giles
Assistant Administrator for the Office of
Enforcement and Compliance Assurance
Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Stoner and Administrator Giles,

I am writing to submit a question that I would like a written response from both of you. On July 25, 2012, each of you testified before Transportation and Infrastructure's Water Resources and Environment Subcommittee at the hearing "Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality."

During the hearing, it was alleged that the EPA uses a one size fits all approach to enforcing the Clean Water Act. The argument was made that the EPA treats private businesses and local government the same, not working with municipalities that have made a "good faith" effort in working to correct violations of the Act.

The question I would like you to respond to is:

"Does the Environmental Protection Agency take municipalities "good faith" efforts into account when determining enforcement under the Clean Water Act?"

I look forward to the Agency providing a detailed response in a timely manner so that it may be made a part of the official record for this hearing. If you have any questions or have the need for additional information, please have your staff contact Marcus Woodson of my staff at (202) 225-8699.

Sincerely,


Donna F. Edwards
Member of Congress

cc: Chairman Bob Gibbs, Subcommittee on Water Resources and Environment
Ranking Member Timothy Bishop, Subcommittee on Water Resources and Environment

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

SEP 13 2012

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

The Honorable Donna F. Edwards
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Edwards,

Thank you for your letter of August 7, 2012 in follow up to my July 25, 2012 testimony before the Subcommittee on Water Resources and the Environment. Although you requested a response from both myself and Nancy Stoner, the Acting Assistant Administrator for Water, I am responding to your letter as your question concerns enforcement practices. Specifically, you asked whether the Environmental Protection Agency (EPA) takes municipalities' good faith efforts into account when determining enforcement under the Clean Water Act (CWA). I appreciate the opportunity to clarify the issue. The answer is an unequivocal "yes."

While we strive to provide equal and consistent treatment to all parties regulated under the CWA and all other statutes administered by the Agency, we recognize that communities often face unique challenges. Within the bounds of the law, EPA's practice is to work with communities to find the best solutions to meeting their CWA obligations. The commitment to taking municipalities' efforts into account can be seen in both policy and practice. EPA's enforcement response guidance policy embodies this concept by tailoring the nature of response to the severity and longevity of the violations that need redress. Problems that communities quickly move to resolve can typically be addressed without formal enforcement action. When formal action is required for more long-standing or severe violations, EPA's penalty policy contains specific provisions through which penalties are reduced based on good faith efforts.

A recent example of EPA's good faith efforts to work with communities is the amendment to the consent decree with Indianapolis, through which the City will adopt an alternative approach to addressing sewer overflows that will save them over \$700 million. EPA's water enforcement program has also embraced numerous efforts by communities pursuing the multiple benefits of green infrastructure as an important part of the solution to wet weather problems. This is reflected in consent decrees with Cleveland, St. Louis, Hamilton County, Ohio and others. The diversity of approaches in these and other examples shows that EPA does not take a "one size fits all" approach to enforcement of the CWA.

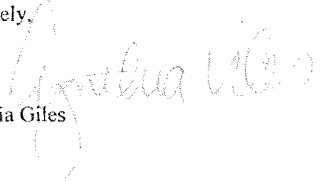
In many cases, consent decrees also include injunctive relief elements that are based on work that is ongoing or already planned in a community. EPA strives to work with communities who have taken proactive steps to resolve their challenges and it is often possible to craft enforcement

agreements around the completion, continuation, or enhancement of the good faith efforts that communities have already initiated.

The Integrated Planning Framework that EPA released this year represents a redoubling of the Agency's commitment to working with communities to find innovative and integrated solutions, and to ensuring that a "one size fits all" approach is not taken. It encourages communities to come to the table with solutions that prioritize work so that those efforts with the greatest positive impact are completed first. While the implementation of the Framework is still in its early stages, we are already seeing many communities moving forward to propose integrated solutions and we will continue to work with those communities to meet the shared goals of the CWA.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at 202-564-1859.

Sincerely,


Cynthia Giles



July 27, 2012

The Honorable Bob Gibbs
Chair, Subcommittee on Water Resources and Environment
Transportation and Infrastructure Committee
U.S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Timothy Bishop
Ranking Member, Subcommittee on Water Resources and Environment
Transportation and Infrastructure Committee
U.S. House of Representatives
2163 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Gibbs and Ranking Member Bishop:

On behalf of American Rivers' more than 100,000 members and supporters, I want to thank you for holding a second hearing on the U.S. Environmental Protection Agency's (EPA) proposed integrated planning and permitting framework.¹ Across the country, the total needs for wastewater and stormwater management totaled \$298.1 billion as of 2008. For drinking water infrastructure, the total needs between 2007 and 2027 total \$334.8 billion. There is a critical need for investment in our water infrastructure to protect safe, clean water for people and rivers. The Subcommittee's hearing addresses an approach that may help communities to direct limited dollars toward cost-effective solutions that produce multiple community benefits.

The EPA's proposed Integrated Planning and Permitting Framework enables communities to evaluate strategies to sequence required investments in water infrastructure and to incorporate approaches, like green infrastructure, that may address multiple regulatory requirements. A more holistic approach to water management could be a smart approach for communities to make more efficient and innovative investments that achieve compliance with fundamental Clean Water Act standards.

American Rivers strongly supports the EPA's position to assure compliance with Clean Water Act requirements under the integrated planning and permitting framework. While this approach offers opportunities to improve the efficiency and cost-effectiveness of water infrastructure investments, it should not come at the expense of clean water. We support EPA's rejection of "time outs" from regulatory compliance and enforcement.

¹ U.S. EPA, *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*, May 2012.

Any integrated permitting approach must achieve the Clean Water Act's goals in the most sensible, efficient way, and not weaken the Act's fundamental protection of streams and rivers that provide drinking water for roughly two-thirds of all Americans. The proposed integrated approach should be used as a mechanism to cost-effectively and efficiently meet environmental and public health regulations with opportunities for robust public participation.

In addition, American Rivers strongly supports the EPA's efforts within the framework to prioritize and encourage the use of green infrastructure and other innovative practices to comply with Clean Water Act requirements that also provide multiple benefits to communities. Integrating the built and natural landscape by protecting and restoring floodplains and small streams or using rain gardens and permeable pavement offers a cost-effective approach to protecting clean water supplies. These practices also can create jobs, stimulate investment opportunities, and improve the health and livability of communities.

Already, many communities have started successfully using these approaches to address their water needs, providing information and experience that can be built on through the integrated permitting process. A strong regulatory framework has provided a driver for innovation, spurring the use of technologies such as green infrastructure and water efficiency. For example, the City of Bremerton, Washington used both green and more traditional gray approaches to reduce combined sewer overflows. Even with the cost of providing an incentive payment to landowners to take part in programs like downspout disconnection, the City found that it was ten times cheaper to integrate green solutions rather than relying solely on gray infrastructure.

In a challenging fiscal climate, it is critical for communities to develop sustainable strategies like this that maximize the benefits per dollar invested. Protecting clean water and public health require significant investment, but many communities are not considering innovative financing mechanisms for sustainable water infrastructure systems. A recent analysis in Philadelphia, for example, showed that a stormwater fee combined with a credit for managing water on-site could yield almost \$400 million in private investment opportunity.² With much of the polluted stormwater runoff that fouls our rivers coming from unregulated sources like big box stores, parking lots, and rapidly growing suburban areas, there is often a disproportionate financial burden on cities to treat polluted runoff coming from these unregulated areas. We support the framework's specific inclusion of an assessment of financial capability that includes stormwater fees and other revenue as it creates opportunities to equitably target pollution sources. In addition, American Rivers supports the EPA's efforts to update its stormwater rules to better distribute pollution control costs to the actual sources to offset costs otherwise borne by the public.

² NRDC and EKO Asset Management Partners, *Financing Stormwater Retrofits in Philadelphia and Beyond* (Feb. 2012).

While American Rivers supports the development of innovative mechanisms to finance water infrastructure improvements, we believe that there is still a significant role to be played by the existing State Revolving Funds (SRFs). We are also supportive of the Green Project Reserve program within the SRFs, which reserves a portion of the SRF funding allocated to the states for green infrastructure and water and energy efficiency projects that has been successfully used by communities across the country. We have been disappointed by recent Congressional and Administration proposals to cut the SRFs and the Green Project Reserve. We look forward to working with the Committee to improve these important programs, which provide significant sources of capital to states and municipalities for water infrastructure investments.

In summary, American Rivers supports a more holistic approach to achieving clean and reliable water for people and rivers by using cost-effective and innovative investments in water infrastructure. Fundamentally, however, this approach must maintain protections for clean water and public health, and we strongly support moving forward with this integrated permitting process in select communities to demonstrate and better understand how this can best work.

We look forward to continuing to work with you and thank you for holding a hearing on this critical issue.

Sincerely,

A handwritten signature in black ink, appearing to read "Katherine Baer". The signature is fluid and cursive, with the first name being more prominent than the last.

Katherine Baer
Senior Director Clean Water and Water Supply Programs