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February 27, 2013

U.S. Environmental Protection Agency  
Office of Enforcement and Compliance Assurance  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OECA-2012-0956

The National Association of Clean Water Agencies (NACWA) is pleased to provide comments on the Environmental Protection Agency's (EPA) selection of enforcement and compliance national priorities for fiscal years (FY) 2014-2016. NACWA represents nearly 300 of the nation's publicly owned wastewater and stormwater utilities. These clean water agencies are true public stewards on the front lines of environmental and public health protection, working for clean water advancements throughout the country.

NACWA believes EPA's recent Integrated Planning Framework – jointly developed by the Office of Water and the Office of Enforcement and Compliance Assurance – provides an invaluable opportunity to work more collaboratively with clean water agencies to help them meet their Clean Water Act (CWA) obligations. NACWA encourages the Agency to focus its efforts over the next three years on assisting utilities effectively use the integrated planning approach, instead of pursuing federal enforcement actions. By refocusing its efforts on integrated planning as opposed to enforcement, EPA can avoid lengthy, sometimes contentious negotiations over program requirements and instead facilitate making the best investments to improve water quality.

NACWA members are proud of the investments they have made over the past four decades to advance the goals of the CWA. However, while municipal clean water agencies have made - and will continue to make - tremendous strides to address water quality concerns, other sources of impairment have not made similar reductions in pollutant loads. This is particularly true for non-point sources. NACWA believes a holistic watershed approach that addresses all sources of impairment is the only way to make significant water quality advances. Utilizing the Integrated Planning Framework, rather than more traditional enforcement proceedings, to address lingering water quality challenges will help to enable this more holistic solution. National enforcement priorities that place continued emphasis on one aspect of the clean water program without addressing other

sources of water impairment will fail to achieve meaningful water quality improvement and continue to encourage unsustainable spending levels.

NACWA is concerned that wet weather municipal infrastructure leads the list of potential enforcement priorities for the FY 2014-2016 period, just as it has been a top priority for the last several cycles. Although combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs) contribute to water quality impairments in some parts of the country, significant progress to control these flows has been achieved. While municipal consent decrees may allow the federal government to claim “success” in combating water pollution by pointing to the large price tag of municipal investments mandated by these decrees, basic science and water quality analyses are increasingly showing that costly municipal enforcement actions are only having a negligible impact on water quality improvement due to continued impairment from other sources.

The recent economic downturn of the past five years has put even greater financial pressure on local government resources, and made it abundantly clear that the existing paradigm of federal municipal wet weather enforcement is simply unsustainable. Forcing municipalities into inflexible federal enforcement actions with little meaningful regard for community financial capability or the ability to prioritize investments is both environmentally and economically counterproductive and a waste of valuable local ratepayer dollars. Additionally, NACWA is concerned that further federal enforcement emphasis on wet weather municipal infrastructure without making additional federal funds available to help municipalities address their water infrastructure needs places the entire financial burden on local communities, ignoring the important federal and local partnership to improve water quality that was envisioned by the CWA.

NACWA commends EPA on the release of the Integrated Planning Framework as a way to address some of these very real economic concerns facing public clean water agencies and their local communities with regard to meeting CWA obligations. The integrated planning approach, which allows communities to present their own plan for prioritizing clean water investments to ensure the best environmental return for limited local resources, represents an important acknowledgment from EPA that more flexibility and local control is needed in reducing water pollution. Integrated planning also provides clean water utilities and local governments with an important tool in addressing CWA needs in both an enforcement and permitting context.

NACWA is proud to have played a key role in helping advocate for the integrated planning approach, and looks forward to continued work with EPA to ensure its success. At the same time, NACWA is also committed to ensuring ratepayers across the country understand that they are getting the maximum bang for the buck for every dollar they invest in water infrastructure.

Accordingly, NACWA encourages EPA to reconsider inclusion of municipal wet weather issues in its enforcement priorities for the FY 2014-2016 cycle. Instead, EPA should spend the next three years working directly with clean water utilities to help them effectively develop and implement integrated plans. Working with local communities through integrated planning in a permitting context – and instead of initiating a traditional enforcement action – will not only save municipalities and the federal government significant

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financial resources, but also will lead to much better long-term environmental improvements. Additionally, NACWA encourages EPA to spend the next three years using the integrated planning framework to work with communities already under consent decree to review and potentially reopen those decrees and find ways to improve overall water quality improvement at less cost, such as through the use of green infrastructure.

A continued national enforcement priority focused on municipal utilities is symptomatic of an overall enforcement paradigm on clean water issues that is ill-equipped to deal with the water quality challenges on the 21<sup>st</sup> century. Instead of the "business as usual" approach to clean water enforcement that focuses heavily on the use of municipal consent decrees, as has been the case for the past 40 years, a new model is needed that looks at permitting and enforcement from a watershed approach.

This new approach would be better suited to address evolving challenges such as climate change and take advantage of new opportunities such as green infrastructure. It would also improve the way EPA looks at issues of financial capability and affordability when deciding how communities should pay for water infrastructure improvements. Integrated planning provides an important first step in this process, but more innovation in the CWA enforcement arena is needed.

NACWA appreciates the opportunity to provide these comments on EPA's proposed enforcement priorities, and looks forward to continued discussions with EPA on an issue that is of central importance to both the Agency and NACWA's members. Please do not hesitate to contact me at 202/833-3692 or *ngardner-andrews@nacwa.org* if you have any questions or would like to discuss these comments further.

Sincerely,

A handwritten signature in black ink, reading "Nathan Gardner-Andrews". The signature is written in a cursive, flowing style.

Nathan Gardner-Andrews  
General Counsel