



May 30, 2014

Ms. Nancy Stoner  
Acting Assistant Administrator  
Office of Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue NW  
Washington, DC 20460

Re: Implementation of the 8<sup>th</sup> Circuit Court of Appeals Ruling in *Iowa League of Cities v. EPA*  
(Docket No. 11-3412)

Dear Ms. Stoner:

Thank you for your response to our November 26, 2013 letter to U.S. Environmental Protection Agency (EPA) Administrator Gina McCarthy on implementation of the 8<sup>th</sup> Circuit Court of Appeals ruling in *Iowa League of Cities v. EPA* (Docket No. 11-3412). The issues raised in the case are critically important to our member communities, and it is essential that they clearly understand the Clean Water Act (CWA) requirements that apply to their facilities. Our organizations were disappointed by your April 2 response and believe that the EPA has unnecessarily created regulatory uncertainty regarding the practice of peak flow blending that will impose significant burdens on the nation's communities. We request that you provide additional justification for the EPA's decision not to apply the *Iowa League of Cities* decision nationwide.

It is our position that EPA has made a policy choice to limit application of the 8<sup>th</sup> Circuit's decision – a choice we strongly disagree with and believe is legally unsupported. EPA's decision in this instance is not simply a legal exercise; it has real consequences for and will bring real harm to communities across the country. EPA's piecemeal approach to implementing the 8<sup>th</sup> Circuit's ruling will only lead to a patchwork of interpretations on peak flow blending that will lead to greater confusion and result in more costly burdens for the nation's communities. Further, the EPA's decision in this case is contrary to the importance of consistently applying solutions throughout all the regions, which Administrator McCarthy has discussed with us, despite the fact that this case presents no exception to that principle. Applying inconsistent regulatory requirements with regard to blending – applying one set of rules to one community but a different set to another – is at odds with the 8<sup>th</sup> Circuit's ruling and is unacceptable.

In recent years, EPA has increasingly acknowledged the burden its water-related regulations place on communities nationwide. EPA has made, and we have applauded, significant strides toward alleviating some of these pressures with the development of the *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* in June 2012 and recent work on a new *Financial Capability Assessment Framework*. These frameworks are intended to provide local governments with more control over the CWA investments they must make and to sequence investments in a way that will protect the environment, at a pace that is fiscally sustainable for the community. It is essential, however, that the CWA mandates that drive these investments are rational and consistently applied to ensure that communities will have certainty over the long-term. The issue of blending continues to be an area that has suffered from inconsistency and uncertainty in the long-term. Now, with the 8<sup>th</sup> Circuit ruling, the issue of blending has again become a moving target. It simply does not make sense to have a policy on blending that will lead to utilities in neighboring states in the same EPA Region having to meet different requirements.

Additionally, your letter references an upcoming public health forum to “ask questions about the public health implications of various bypass and blending scenarios during wet weather events.” The question of public health impacts from peak flow treatment and blending is one that has been settled, with no evidence of an increased risk to public health following blending events.

Neither the bypass nor secondary treatment rules are “health-based.” Instead, the applicable pathogen-related requirements for municipal operations come from adopted water quality standards. Looking at the potential for health impacts associated with non-biological treatment scenarios during wet weather, *even when such treatment meets all applicable standards and permit limitations*, is contrary to the basic structure of the CWA. Examining public health impacts in the context of technology-based standards creates an entirely new compliance standard under the CWA and will have ramifications for all communities with treated combined sewer overflow discharges and for stormwater best management practices.

Given its potential outcomes, a number of our organizations plan to participate in the upcoming forum scheduled for June 19-20, and intend to submit reports and data to support the position that there is no increased public health risk. We are concerned that the outcome of the forum may lead to regulatory overreach, and therefore, we respectfully request clarification from EPA on the goals and desired outcomes of the forum.

In closing, we request that you provide additional justification for the decision not to apply the 8<sup>th</sup> Circuit decision on a national basis. Again, failure to do so creates an inconsistent and unpredictable regulatory environment for communities and clean water utilities across the country. We further request additional information on the intended goals and desired outcomes of the planned public health forum.

Nancy Stoner, Office of Water

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Sincerely,



Tom Cochran  
CEO and Executive Director  
The U.S. Conference of Mayors



Clarence E. Anthony  
Executive Director  
National League of Cities



Matthew D. Chase  
Executive Director  
National Association of Counties



Ken Kirk  
Executive Director  
National Association of Clean Water Agencies

cc: Gina McCarthy, Administrator, EPA  
Bob Perciasepe, Deputy Administrator, EPA  
Andrew Sawyers, Office of Wastewater Management, EPA