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February 12, 2015

Dan Engelberg, Director

Director of Program Evaluation

US Environmental Protection Agency, Office of Inspector General

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Re: Project No. OPE-FY14-0045, Municipal Sewer Systems – Consent Decree Progress and Challenges

Dear Director Engelberg,

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to submit additional information to the Office of the Inspector General (OIG) regarding the effectiveness of the U.S. Environmental Protection Agency's (EPA's) municipal wet weather enforcement efforts via consent decrees. NACWA represents the nation's publicly-owned treatment works (POTWs) that treat wastewater, along with municipal separate storm sewer system (MS4) utilities that manage urban stormwater. NACWA's nearly 300 public utility members provide the majority of the U.S. population with reliable sewer service and collectively treat and reclaim over 18 billion gallons of wastewater each day.

As we have previously discussed with you and your team, the OIG's audit will have a direct impact on NACWA's public agency members. Many NACWA members are either currently under consent decree or may enter consent decrees in the future. Accordingly, we encourage OIG to consider NACWA's comments and recommendations outlined below to ensure the investigation and resulting report take into account the most salient factors when evaluating the effectiveness of EPA's ongoing wet weather enforcement initiatives.

NACWA seeks to provide OIG with broad recommendations on how we believe EPA's wet weather enforcement process could be improved based on our significant national experience working on enforcement issues. These recommendations come from our substantial involvement over the last 20 years on enforcement matters – including efforts to compile the most comprehensive analysis and collection of wet weather consent decrees through our *Consent Decree Handbook* and *e-Library* – along with detailed conversations with many of our utility members over recent months.

We understand that as part of this investigation OIG has conducted interviews with a number of utilities under consent decree, and NACWA commends OIG for contacting certain communities directly in order to most accurately and thoroughly gather specific information and examples. Knowing that OIG has already examined specific case studies, NACWA's recommendations focus on a set of five overarching issues that we believe deserve attention as part of any effort to improve the success and effectiveness of EPA's wet weather enforcement initiatives.

### **Summary of Recommendations**

A short summary of NACWA's five recommendations is included here; background and detail on these recommendations are included below.

**Recommendation #1** – EPA should work collaboratively with communities based on unique site-specific circumstances to determine the appropriate goals for achieving environmental improvements and the appropriate metrics for determining success under a consent decree or other enforcement mechanism, using a cost-benefit, knee-of-the-curve analysis as the foundation.

**Recommendation #2** – The concepts of EPA's Integrated Planning and Affordability Frameworks and Strategic Plan – including providing communities with adequate time and compliance assistance to develop a prioritized and affordable plan that achieves the most beneficial and cost-effective results – should drive all EPA enforcement efforts.

**Recommendation #3** – EPA should include adaptive management concepts – rather than prescriptive end dates or cost figures – as a central component of all consent decrees or enforcement orders.

**Recommendation #4** – EPA should measure success by actual and anticipated benefits to the community and the environment rather than the amount of civil penalties assessed.

**Recommendation #5** – EPA should ensure there is consistency among its Regional offices in how wet weather enforcement initiatives are implemented across the country.

### **Background**

Over the last 40 years, communities and clean water agencies nationwide have been responding to a growing list of Clean Water Act (CWA) regulatory programs to improve the nation's water quality. As part of these efforts, clean water utilities are spending substantial resources to comply with CWA mandates under EPA's National Pollutant Discharge Elimination System (NPDES), Combined Sewer Overflow (CSO), and Sanitary Sewer Overflow (SSO) programs. At the same time, these utilities also face significant costs related to asset management (upgrades and replacement of aging pipes and systems) as well as future costs to address nutrients, stormwater, contaminants of emerging concern, and sustainability and resiliency requirements in response to climate change. The totality of these mandates is staggering for many communities.

In addition to ongoing compliance, communities have faced enforcement actions by federal and state governments regarding wet weather and sewage overflow issues over the past two decades. These wet weather negotiations generally result in requirements that communities plan for, fund, and make million – and even billion – dollar investments. The resulting programs and projects from these enforcement actions will often be

the single most expensive public infrastructure project investment a municipality ever makes. These costs will ultimately be borne by the ratepayers - the residents and businesses of the local community.

While costs of compliance with decrees and enforcement actions continue to rise, there are growing questions among many clean water stakeholders about whether these significant expenditures are the most cost-effective ways to achieve meaningful water quality improvements. Increasing amounts of municipal resources are spent to continue curtailing overflows, but a proportionate return on investment is not being seen in many of the nation's waters. In many cases, the predominant contributing factors to water quality impairment are urban and agricultural stormwater runoff rather than sewer system overflows. This reality raises important questions. Are EPA's enforcement efforts pursuing the most effective approaches – from both a cost and environmental standpoint – to address wet weather-related water quality impacts? And if the answer to this first question is no, as NACWA believes, then how can EPA improve its enforcement efforts to maximize environmental outcome and cost effectiveness?

Enforcement is one of the most powerful tools EPA possesses to ensure that precious resources expended are achieving the maximum environmental benefits. Clean water agencies and the federal government should enter into these agreements as stewards of the environment and partners with a joint obligation to ensure the long-term effectiveness, viability and affordability of any given plan or program.

NACWA's recommendations for improving the effectiveness and success of EPA's wet weather enforcement initiatives are described in more detail below.

**Recommendation #1: EPA should work collaboratively with communities based on unique site-specific circumstances to determine the appropriate goals for achieving environmental improvements and the appropriate metrics for determining success under a consent decree or other enforcement mechanism, using a cost-benefit, knee-of-the-curve analysis as the foundation.**

The focus of any negotiation between EPA and clean water agencies, most of which are fellow government entities, should always be about getting the best, most cost-effective environmental result for the community that will be responsible for the long-term viability and implementation of the decree. However, determining the appropriate goals and outcomes for consent decrees is arguably the most important part of the entire process. Any future discussion or evaluation of a consent decree program as to its "success" in meeting its goals will ultimately be irrelevant if the appropriate goals have not been identified in the first place. That is why it is critical that EPA work jointly with communities on a case-by-case basis to determine the right benchmarks and desired outcomes of enforcement efforts, taking into consideration both environmental impacts and cost-effectiveness.

Many consent decrees have been structured with specific volumetric reductions as the end goal. In the CSO context, this approach flows from the [1994 CSO Policy](#) where compliance with water quality standards may be "presumed" if a municipality achieves 85% CSO flow capture, or reduces CSOs to an average of 4 per year. Accordingly, this "presumptive" approach—as it is sometimes referred to—has been a typical starting point for communities when evaluating CSO controls and, therefore, many communities measure their own success via volumetric reduction and percent volume capture. In addition, measuring volumetric reduction can include not only reductions at the point of discharge but also volume reduced by stormwater infiltration, retention or

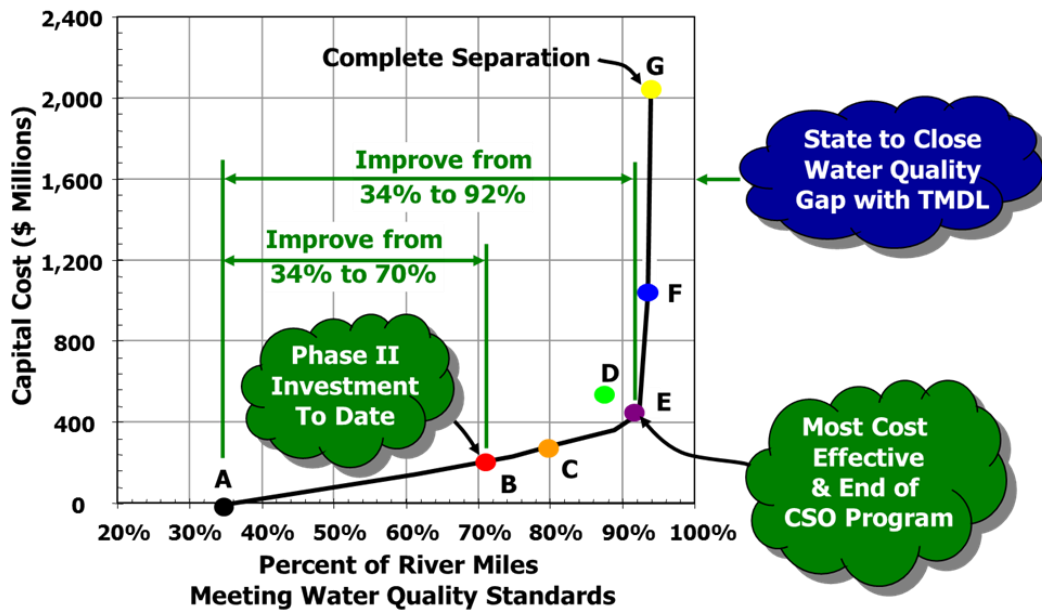
detention and/or amount of private source removal. EPA has also used a volumetric approach to measure and report its “accomplishments” on wet weather enforcement issues by “Volume (gallons) of Untreated Discharge Eliminated” and penalties assessed (see [EPA’s Annual Enforcement Annual Results Numbers at a Glance for Fiscal Year \(FY\) 2014](#)).

Other consent decrees have focused on specific water quality improvements as the end goal, often using a “demonstration approach” to demonstrate - via modeling - anticipated improvements in water quality based on certain wet weather abatement efforts. These improvements from a water quality perspective can be measured in a variety of ways, including increased number of days of compliance with water quality standards, nutrient reductions, increased number of stream miles improved, improved ecological and human health conditions, aquatic habitat restoration, flood mitigation, and quality of life improvements for residents such as enhanced opportunities for recreational access to water bodies.

Regardless of the types of goals set out in a consent decree – volumetric-based or water quality-based – it is critical that the goals be appropriately established using a knee-of-the-curve cost-benefit analysis. In the context of wet weather enforcement, a knee-of-the-curve evaluation examines, via modeling and/or monitoring, at what point the incremental benefit achieved by each increased level of control and expenditure of additional funds does not achieve proportionate environmental improvements. This means working with communities to determine projects and expenditures to address wet weather issues in a manner based on meaningful volumetric reductions in overflows, increases in stormwater detention capacity and/or water quality improvements, not just asking utilities to spend to the level of affordability.

Furthermore, all cost-benefit and knee-of-the-curve analyses must be linked to the requirements of the decree and desired end goals. If a project technically falls within a community’s affordability range, but will not be cost-effective in making meaningful environmental improvements, it should not be required. And if a cost-benefit analysis shows that a less expensive project or approach can achieve the same end goals as a more expensive approach – for instance, in the SSO context, focusing on operation and maintenance improvements to reduce overflows as opposed to constructing new infrastructure – the more cost-effective approach should be used. Incremental improvement in water quality achieved through projects that exceed the knee of the curve are not cost-effective and should not be required.

A knee-of-the-curve analysis is provided below for illustration purposes. The analysis was conducted for a single regulatory requirement – CSOs in this example.



In the graph above, point “E” marks the “knee-of-the-curve” where financial expenditures of the community are most cost-effective to achieve environmental benefit. Any environmental benefit beyond that point is only incremental in nature at a greatly disproportionate cost, and thus does not make economic or environmental sense. If communities are driven to improve water quality beyond the knee of the curve, they may not be able to afford the next priority, which may have a larger water quality benefit. This is the fundamental basis for integrated planning and the adaptive management approach, as described in more detail below.

Using knee-of-the-curve analyses as a foundation for each regulatory driver (CSOs, SSOs, etc.), EPA should work with communities to evaluate a suite of metrics when determining which projects/plans should be included in the vehicle to achieve success (i.e., the consent decree, watershed plans, integrated plans, Long Term Control Plans). These metrics should then be used to gauge success throughout the life of the decree. Such an approach, if implemented correctly, would make it significantly easier to identify and measure meaningful success of wet weather enforcement initiatives. If the desired/anticipated level of success is not occurring, the community should have the flexibility to course correct – see the next recommendation on adaptive management.

This approach aligns with EPA’s FY 2015 [National Program Manager Guidance](#), which applies to EPA’s Office of Enforcement and Compliance Assurance (OECA), all EPA regional enforcement programs, and states implementing EPA-approved inspection and enforcement programs. The Guidance advances “Next Generation Compliance” approaches for better compliance by focusing on *environmental outcomes*.



**Recommendation #2: The concepts of EPA's Integrated Planning and Affordability Frameworks and Strategic Plan – including providing communities with adequate time and compliance assistance to develop a prioritized and affordable plan that achieves the most beneficial and cost-effective results – should drive all EPA enforcement efforts.**

A consistent philosophy and approach pervades EPA's strategic goals and is embodied in the various guidance documents and frameworks relevant to the Agency's wet weather enforcement efforts: engage closely with public sector partners at all levels and the regulated community to achieve environmental benefits in the most pragmatic, collaborative, and flexible way possible based on local environmental, land and water use, and economic conditions. These are EPA's own words and goals and, therefore, they should guide OECA when implementing enforcement initiatives during the consent decree negotiation process.

Recognizing the financial hardships that many communities are facing, and in an effort to develop a mechanism to assist such communities in prioritizing their water quality goals, EPA released its 2012 [Integrated Municipal Stormwater and Wastewater Planning Approach Framework](#). The cover memorandum for the Framework directs the Regions to "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." The objective is to ensure that EPA and the states are working with communities to evaluate all CWA obligations and develop the most cost effective approaches for meeting CWA goals through integrated stormwater and wastewater planning:

Today, the EPA, states and municipalities often focus on each CWA requirement individually for protecting water quality. As a result, we sometimes assess and implement the best alternative to resolve one problem at a time without full consideration of all CWA obligations. This approach may 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. We encourage regions to work with the state to engage our local partners regarding all of their [NPDES] related obligations in an orderly manner. 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. The CWA and its implementing regulations, policy and guidance provide us with the necessary flexibility to work with communities to utilize comprehensive integrated planning to prioritize its waste- and storm-water investments.

EPA has also acknowledged the importance of working collaboratively with communities in its [draft 2014-2018 Strategic Plan](#), in which the Agency advances a philosophy of science-driven partnership and compliance assistance:

EPA will make a visible difference in communities across the country by advancing sustainability, innovation and providing sound scientific advice, technical and compliance assistance and other tools that support states, tribes, cities, towns,

rural communities, and the private sector. Under this Plan, EPA will continue to improve the way we do business, engaging closely with our public sector partners at all levels and the regulated community to achieve environmental benefits in the most pragmatic, collaborative, and flexible way possible—for our children and future generations....

Now is the time to reinvigorate our collaborative efforts to improve water quality, given the nation's significant water-infrastructure needs. We will focus on common-sense, flexible approaches that rely on sustainable solutions, such as green infrastructure, and that build resiliency to help us adapt to the effects of a changing climate....

As we work to implement the FY 2014–2018 EPA Strategic Plan over the next 4 years, we recognize that the Agency and numerous entities vital to our success—federal, tribal, state, and local governments, and other cooperating partners and stakeholders—are all operating under resource constraints that could impede our mutual progress. We will collaborate in new ways to address the environmental and human health challenges that lie ahead of us, leverage resources to the greatest extent possible, and continually seek new opportunities to work more effectively and efficiently.

In November 2014, EPA released the [Financial Capability Assessment Framework for Municipal Clean Water Act Requirements](#) to demonstrate EPA's commitment to implementing CWA objectives in a financially sustainable manner:

Local governments and authorities want to provide clean water for their communities, and they play an essential role in providing wastewater and stormwater infrastructure and services for their citizens, businesses and institutions. These municipal functions have been an important part of implementing the CWA to protect public health and improve water quality .... Many local governments face complex water quality issues that are heightened by the need to address population growth or decline, increases in impervious surfaces, source water supply needs, and aging infrastructure.... As programs are implemented to improve water quality and attain CWA objectives, many state and local government partners find themselves facing difficult economic challenges with limited resources and financial capability. We recognize these challenging conditions and are working with states and local governments to develop and implement new approaches that will achieve water quality goals at lower costs and in a manner that addresses the most pressing problems first.

Long-term approaches to meeting CWA objectives should be sustainable and within a local government or authority's financial capability.

EPA repeatedly sets a clear goal of working with communities to provide adequate time and compliance assistance to develop a prioritized and affordable plan that achieves the most beneficial and cost-effective results.

NACWA applauds EPA for taking these steps in recent years to acknowledge the importance of allowing communities to design and plan for their own wet weather improvements in a more flexible, integrated fashion. Now the Agency needs to put this approach into widespread practice in a nationally consistent manner by making sure its philosophy of collaboration and flexibility forms the bedrock of all wet weather enforcement efforts. The flexibility afforded to communities should be interpreted and administered broadly, subject only to the confines of the CWA itself.

EPA regulators (and their counsel – U.S. Department of Justice) should approach negotiations with a philosophy of partnership and set a tone of collaboration, innovation, and integration to achieve the common goal of improved water quality. The traditional adversarial “I win, you lose” style should be replaced with an approach that encourages trade-offs to achieve win-win solutions. Integrated planning approaches provide a way to achieve these goals. In addition, EPA should cooperate with the community to gather waterbody/watershed characterization data and facilitate data-sharing partnerships with entities such as the USGS, state regulatory agencies, and local watershed groups. These data are essential to define the proper remedy in a given case and help determine prioritization of projects, including the optimal mix of grey and green infrastructure.

The importance of accurate financial capability and affordability analyses as part of the enforcement process cannot be overstated. Forcing a community to agree to a consent decree it cannot afford will all but guarantee failure of the enforcement effort. Accordingly, EPA must put the concepts of its Affordability Framework into practice in all future decrees and enforcement actions. This means understanding that the costs of a decree can impact different segments of a community differently – for instance, that poorer parts of a community (oftentimes in a central city area) may have a harder time affording rate increases than more affluent surrounding areas. EPA must recognize these differences and work with communities to find solutions to these affordability and financial capability challenges. Given the magnitude of expenditures required by these decrees, the significant impact on the community, and the common interest of maximizing environmental benefit, enforcement negotiations should never be rushed in a manner that curtails the necessary planning for such a significant undertaking. If fully embraced, the approach outlined by the Integrated Planning and Affordability Frameworks provides a valuable path forward to allow communities time to develop a prioritized plan that addresses financial capability/affordability concerns before committing to detailed projects, programs, and interim and final deadlines.

In line with Integrated Planning’s goal of giving communities more control and input over how to meet their long-term CWA obligations, EPA’s oversight and input role in enforcement negotiations and resulting consent decrees should be reasonable and productive. EPA’s focus should be on the high level interim and end goals to ensure reasonable progress and not, for example, on project management and technology selection. EPA should afford a certain amount of deference to a community’s expertise and experience in managing the details of its unique and complex system and with managing the public dollars that fund its operations. As an example, one common efficiency concern identified by NACWA members within the enforcement context is the frequency of reporting required by decrees. Communities invest significant resources and often have to hire staff or contract solely for the purpose of drafting onerous reports (often quarterly). EPA itself often lacks the resources and time to review such reports in a timely manner. EPA should work with communities to arrive at a more reasonable reporting structure rather than insisting upon unnecessary reports.



Finally, one of the key concepts that is evident from EPA's own documents in the importance of working with communities on compliance assistance activities to achieve water quality goals in less formal ways than enforcement actions. A more robust focus by EPA on compliance assistance programs instead of consent decrees, including pursuit of integrated planning approaches outside of formal enforcement orders, could help to improve the success of the Agency's wet weather initiatives. The use of compliance assistance is especially important now given the evolving nature of the Agency's wet weather enforcement focus. With so many of the larger systems across the country already addressed through enforcement actions and with wet weather remaining a top EPA enforcement initiative, EPA has shifted its focus to smaller systems. Many of these smaller systems/communities lack the resources, expertise and sophistication to negotiate complex consent decrees, and compliance assistance is especially critical when interacting with such entities. Rather than taking advantage of the situation to get "a better deal" for the government, OECA should ensure fair dealing and provide smaller communities with additional compliance assistance and the same ability to pursue integrated planning opportunities as communities with more substantial resources.

**Recommendation #3: EPA should include adaptive management concepts – rather than prescriptive end dates or cost figures – as a central component of all consent decrees or enforcement orders.**

The regulatory landscape continues to shift drastically, and effective utility management requires the ability to adapt. Prioritization is not and should not be static. In addition, communities and technology evolve over time. A rigid decree that sets a fixed course for an extended period of time is contrary to the objectives of the CWA and holds the prospect for imposing substantial undue costs without corresponding environmental benefits. By employing an adaptive management framework, the parties to a decree can create an iterative and more realistic process that allows adaptive changes due to changed circumstances and encourages continuous assessment, reprioritization, innovation and incorporation of new technology. Adaptive management principles can also help utilities address the often challenging costs and obligations of performance compliance activities under consent decrees.

Adaptive management is also necessary from an economic standpoint. According to [Forbes](#), "in nearly 70 years the since the end of World War II, we have had 11 recessions, or about one every six years on average." EPA recognized the impact of the last major economic downturn in the Integrated Planning Framework by noting that the "ability to finance improvements by raising revenues or issuing bonds has been significantly impacted during the ongoing economic recovery." Thus, OECA should acknowledge this reality in future consent decrees. A sign of progress is EPA's recent [consent decree](#) with the City of Lima, Ohio which contains a provision to modify certain control measures or extend a milestone by five years, upon EPA's approval, if the city experiences "significant adverse changes to its financial circumstances or other financial or budgetary issues." There is also a reopener for "changed circumstances," including financial and budgetary considerations, adaptive management, and green infrastructure projects.

One needs to look no further than the CWA for endorsement of adaptive management. The CWA embodies adaptive management concepts in several contexts including biennial state §305(b) water quality assessments, §303(d) impaired waters identification, triennial Water Quality Standards review, and the current 5-year cycle for NPDES permits.

The overarching goal of adaptive management in the enforcement context is to allow a utility to learn while implementing a decree or enforcement order and course correct based on lessons learned, changed

circumstances or priorities, and/or new regulatory mandates that have arisen. Adaptive management incorporates and builds upon watershed management, integrated planning and the watershed approach. The “watershed” approach to water quality protection has been a priority with EPA for the last several years. Attributes of watershed management include holistic assessment of problems and solutions (e.g., examining all sources, loads and stressors to a given waterbody or watershed) and prioritization.

Adaptive management also includes asset management, which provides a mechanism for utilities to assess the condition of assets and adaptively manage financing programs/projects based on risks (including risks of non-compliance). Because water and wastewater management are among the most capital intensive industries, ongoing evaluation to effectively manage utilities’ capital infrastructure assets is necessary. Ultimately, the onus is on the utility to know its system and to perform cash-flow forecasting to evaluate revenues and the entire portfolio of regulatory compliance, management, operation and maintenance expenses under tenable rate increase programs that are within the community’s financial capabilities. Asset maintenance must be a key component of this analysis, and a utility must know how much it needs to spend to maintain its existing system while also addressing consent decree requirements. At the same time, EPA must understand that it cannot put a utility in a financial position where basic asset maintenance needs are cut back to pay for consent decree obligations. If required to divert resources to consent decree projects at the expense of asset maintenance, communities will likely find themselves in a “rob Peter to pay Paul” scenario due to new problems down the road created by maintenance backlog. Only after this type of analysis is performed can a community begin to prioritize and schedule new projects pursuant to a consent decree.

Additionally, adaptive management can help utilities better control the costs of the various activities and actions that may be required under a decree to show performance compliance. These may be costs related to monitoring, modeling, reporting or other actions necessary to show that the performance mandated by a decree is being achieved. The cost of these performance compliance activities are often overlooked when looking at overall program costs, and also can result in high levels of effort on the part of the utility. Use of an adaptive management approach would help to better align the costs and obligations of these compliance requirements with the overall requirements of a decree, resulting in cost savings and a more appropriate level of effort for the utility.

Adaptive management is critical to achieving the most beneficial water quality improvements at the lowest cost and is, therefore, in the best interest of the community being served and the environment.

**Recommendation #4 -- EPA should measure success by actual and anticipated benefits to the community and the environment rather than the amount of civil penalties assessed.**

As noted above, one of the metrics EPA uses to evaluate its success on the wet weather enforcement front is amount of penalties assessed in a given year (see [EPA’s Annual Enforcement Results Numbers at a Glance for Fiscal Year \(FY\) 2014](#)). In addition to including penalties assessed in its annual enforcement report, every press release issued by EPA announcing a consent decree emphasizes the penalty as one of the key components of the decree.

While penalties may be necessary from a diligent prosecution standpoint, taking resources from a local community and local government that will be saddled with significant financial obligations affecting current and future generations should be viewed as a necessary evil rather than a highlight of the success of the

program. Indeed, EPA should be focused on minimizing penalties as much as possible, so that more funds can be spent on local water quality investments that will result in actual environmental improvements. EPA should also consider the stigma associated with such punitive measures and how its rhetoric and course of action might be perceived at the local level by decision-makers, stakeholders, and ratepayers, all of whom will be relied upon for the needed revenue to comply with the consent decree. The reality is that penalties provide no tangible benefits to the communities that pay them nor result in any water quality improvements. They are accordingly a poor metric for EPA to measure success. The other metrics described above, i.e., water quality improvements or stormwater detention increases, are significantly more meaningful.

Furthermore, public utilities do not profit from noncompliance; thus, penalties do not serve the same objective as with private industry – e.g., deterrent effect and leveling of the economic playing field by eliminating monetary benefit from noncompliance.

Municipal, state and federal entities are all public stewards with vitally important roles to ensure environmental and public health. We are, in short, all in this together and the focus on monetary penalties as a benchmark of success undermines this fundamental reality and unnecessarily leads to a confrontational rather than a coordinated and collaborative environmental ethic.

**Recommendation #5: EPA should ensure consistent implementation of wet weather enforcement initiatives among its Regional offices.**

One of the biggest frustrations NACWA members have experienced over the years on enforcement issues – and one of the biggest complaints NACWA has received from its members who have experienced consent decree negotiations – is the wide disparity that can occur in EPA enforcement approaches across the country. In particular, the lack of a national SSO policy has created inconsistencies in how EPA addresses SSOs in various enforcement actions. While every enforcement action is unique given site-specific factors and should be negotiated based on the needs of the individual community, the ultimate terms of an agreement should not depend on the EPA Region, the personalities of representatives assigned to the matter from the U.S. Department of Justice and the EPA enforcement offices, EPA enforcement quotas, or regional politics. This is particularly true when it comes to NACWA's above-referenced recommendations such as ensuring proper enforcement goals through use of cost-benefit analyses, utilizing Integrated Planning, and incorporating adaptive management principles.

OECA staff from EPA Headquarters have made commendable efforts in recent years to ensure more uniformity in EPA's approach to enforcement proceedings, with particular emphasis on promoting and endorsing Integrated Planning concepts. NACWA applauds these efforts and believes they are an important step in the right direction. However, there is still significant concern from clean water utilities about a lack of consistency when dealing with enforcement officials at both the Regional and state level, with utilities often hearing statements from Regional and state officials that are completely at odds with what EPA Headquarters may be endorsing. These mixed messages create unnecessary confusion and complications in negotiating what are already very complex enforcement issues, and can have significant negative effects on the overall enforcement process. Accordingly, NACWA strongly recommends that EPA continue to work to ensure consistency in enforcement approaches across the country and reinforce the importance of consistency – especially to Regional officials, and also to state officials where possible and appropriate – at every opportunity.

February 12, 2015

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### Conclusion

These comments and recommendations are intended to help improve the effectiveness of EPA's wet weather enforcement initiatives, which have such profound impacts on communities across the country. I am particularly grateful to OIG staff for taking the time to meet with my staff on multiple occasions and further discuss this important project.

Thank you for your consideration of these recommendations and comments. If you have any questions, please don't hesitate to contact Nathan Gardner-Andrews at 202/833-3692 or [ngardner-andrews@nacwa.org](mailto:ngardner-andrews@nacwa.org), or Amanda Waters at 202/530-2758 or [awaters@nacwa.org](mailto:awaters@nacwa.org).

Sincerely,

A handwritten signature in black ink, appearing to read "K Kirk". The "K" is large and stylized, followed by "Kirk" in a cursive script.

Ken Kirk  
Executive Director