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October 14, 2015

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-2015-0628

The National Association of Clean Water Agencies (NACWA) is pleased to provide comments on the Environmental Protection Agency's (EPA) proposed enforcement and compliance national priorities for fiscal years (FY) 2017-2019. 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 to protect and improve water quality throughout the country.

NACWA members are proud of the investments they have made over the past four decades to advance the goals of the Clean Water Act (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 nonpoint sources.

NACWA is concerned that wet weather municipal enforcement remains one of the six proposed enforcement priorities for the FY 2017-2020 period, just as it has been a top priority for the last several cycles. 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 in the 21<sup>st</sup> century. 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.

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, science and water quality analyses are increasingly showing that costly municipal enforcement actions are only having a minimal impact on water quality improvement due to continued impairment from other sources. NACWA believes a holistic watershed approach that addresses all sources of impairment is the only way to make significant water quality advances. Expanded use of EPA's Integrated Planning Framework to address water quality challenges will help to enable this more holistic solution. NACWA encourages the Agency to focus its efforts over the next three years on assisting utilities with a holistic watershed management and/or integrated planning approach, instead of pursuing federal enforcement actions.

In September EPA's Office of Inspector General (OIG) released a report specifically focused on this enforcement initiative. The report - *EPA Needs to Track Whether Its Major Municipal Settlements for Combined Sewer Overflows Benefit Water Quality* - was the culmination of a year-long investigation on the effectiveness of EPA municipal wet weather consent decree enforcement efforts, and highlights needed changes in how EPA approaches municipal wet weather enforcement actions. Specifically, the report notes that EPA must improve tracking and reporting on how the results of wet weather enforcement initiatives and consent decrees are leading to fewer sewer overflows and resulting improvements to water quality in receiving waters.

The report notes that pursuant to consent decrees, "communities are spending more than \$32 billion on projects to reduce and manage untreated sewage and contaminated stormwater discharge into water bodies so that communities can come into compliance with water quality standards." OIG found that "EPA needs improved program controls so that it can assess and track the outcomes resulting from consent decree requirements." While "evaluating water quality impacts associated with consent decree activities has significant challenges," OIG believes "it is incumbent on the EPA to attempt this analysis given the large costs associated with consent decree execution, the need to protect water resources, and the need to support public confidence in EPA accountability." The OIG offered a number of recommendations to EPA's Office of Enforcement and Compliance Assurance (OECA) on tracking and accountability.

In light of this report, OECA should embrace the OIG's recommendations to ensure that limited resources spent on wet weather issues are resulting in commensurate water quality improvements before the Agency continues to encumber more communities with consent decrees. NACWA believes a better tracking system focused on whether enforcement agreements lead to cost-effective and meaningful environmental improvements will result in a much better model for dealing with municipal wet weather issues. It is NACWA's position that 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. 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.

NACWA is encouraged by EPA's embrace of adaptive management and the consideration financial capability in the proposed enforcement priority: "EPA will need to continue to monitor implementation of these long-term agreements, and to adapt them to changing circumstances and new information, such as the increasing commitment of cities to implement green infrastructure, changes in financial capability, or technological advances." With regard to financial capability, NACWA has long held the position that forcing municipalities into inflexible federal enforcement actions with little meaningful regard for a community's ability to afford and

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prioritize investments is both environmentally and economically counterproductive and a waste of valuable local ratepayer dollars. At a time when EPA is also facing budgets cuts and is looking to limit transaction costs associated with negotiating and overseeing decrees, there should be common interest in working collaboratively outside the enforcement context. This approach will not only save municipalities and the federal government significant financial resources, but also will lead to much better long-term environmental improvements.

Accordingly, NACWA encourages EPA to reconsider inclusion of municipal wet weather issues in its enforcement priorities for the FY 2017-2020 cycle. 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 202/530-2758 or [awaters@nacwa.org](mailto:awaters@nacwa.org) if you have any questions or would like to discuss these comments further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Amanda Waters', with a long horizontal flourish extending to the right.

Amanda Waters  
General Counsel