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**Water Docket**

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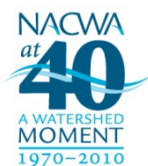
1200 Pennsylvania Avenue, NW

Washington, DC 20460

Attention: Docket ID No. EPA-HQ-OW-2009-0817

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on the U.S. Environmental Protection Agency's (EPA) October 8, 2010, Federal Register notice announcing the Agency's intent to include Chesapeake Bay-specific provisions as part of its new national post-construction stormwater rule currently under development. NACWA is the leading advocacy organization on behalf of the nation's clean water and stormwater utilities and we have many member utilities located within the Chesapeake Bay watershed. Our members are on the front lines of environmental protection working every day to improve the quality of our nation's waters. NACWA members are proud of the significant investments that have been made over the past three decades by the municipal clean water community within the Chesapeake Bay watershed, investments that have helped to protect the Chesapeake Bay and its unique ecosystem. At the same time, we recognize that urban stormwater continues to present water quality challenges for the Chesapeake Bay and we are committed to reducing this source of water quality impairment. We look forward to working with EPA to develop a stormwater rule that improves water quality but is also sensitive to the financial, regulatory, and political realities currently facing the Bay region's stormwater and clean water utilities.

NACWA's comments are divided into three sections: the first section contains a few general comments on EPA's rulemaking effort; the second section contains comments on EPA's preliminary considerations for modifying and/or supplementing EPA's stormwater regulations in the Chesapeake Bay watershed, and the third address environmental justice considerations.



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### **General Comments**

As EPA explores the possibility of additional, even more stringent requirements for municipal separate storm sewer system (MS4) utilities located in the Chesapeake Bay watershed as part of a national stormwater rule, NACWA encourages the Agency to bear in mind that almost all municipalities which would be directly impacted by these new regulations are currently facing significant affordability concerns with regard to meeting their existing Clean Water Act mandates. Many clean water agencies are already facing significant economic pressures to meet the requirements of the forthcoming Chesapeake Bay total maximum daily load (TMDL), not to mention the investments being made under existing wet weather consent decrees for combined sewer overflows or sanitary sewer overflows.

Another key component that EPA should consider is looking at stormwater permitting within the larger context of a watershed approach, particularly in the Chesapeake Bay watershed where runoff from non-point agriculture sources is a major source of impairment. NACWA believes that choices about the scope and type of stormwater regulations, including stormwater design standards, criteria for new and redevelopment, treatment of sensitive areas, prioritization of pollutants, and similar issues are best handled in the context of watershed permits that look at all the sources of pollution within a given watershed. It is only by taking this "wide-angle view" of permitting and by looking at the entire watershed that water quality improvements can be achieved in the most efficient and effective manner and with the greatest benefit to watershed residents. The ability to engage in water quality trading is an important element of a watershed approach and can be a valuable tool in stormwater management. NACWA encourages EPA to incorporate a watershed approach and water quality trading both in the national stormwater rule as well as in any Chesapeake Bay-specific provisions.

NACWA would also like to point out that even with significant efforts on the part of municipalities within the Chesapeake Bay watershed to address urban stormwater runoff, agriculture will continue to be the largest source of water quality impairment to the Chesapeake Bay. Until such time as all stakeholders come together to reduce agricultural runoff, we will continue to struggle to achieve the water quality improvements that we all desire for the Chesapeake Bay.

### **Comments on EPA Preliminary Considerations**

NACWA has the following comments on EPA's four preliminary considerations for Chesapeake Bay-specific provisions of a national stormwater rule.

#### *Option 1: Designate Additional Discharges to be Regulated*

As a general statement, NACWA is supportive of efforts to regulate additional sources of unregulated discharges within the structure of the National Pollutant Discharge Elimination System (NPDES) permitting program to the extent such discharges contribute to water quality impairment. Such an approach is necessary to effectively manage any watershed and would help to level the playing field by making currently exempt dischargers responsible for the quality of their stormwater discharges rather than placing all the burden on existing Phase I and Phase II communities and construction sites. In particular, NACWA believes that the idea of regulating stormwater discharges from specific types or sizes of development that are not currently covered by an MS4 permit deserves further study. The

concept of additional regulation of discharges outside the MS4 jurisdiction that are contributing to water quality problems has the potential to reduce overall water quality impairment and take some of the burden off of permitted MS4 utilities.

However, NACWA does have concerns related to expanding the area subject to federal MS4 regulation to the extent it would increase the regulatory and financial burden on MS4 utilities. NACWA is opposed to efforts that would require MS4 utilities to expand their regulatory oversight at a time when many municipal budgets are shrinking and under significant pressure. Any efforts by EPA to increase the area subject to federal MS4 regulation must also come with increased federal regulatory and financial assistance to stormwater utilities to help them respond to an increased federal mandate. An increase of the federal stormwater regulations on MS4s without additional federal support will only further burden municipal utilities when local resources are already stretched to the breaking point. Furthermore, NACWA is opposed to any regulatory changes that would obligate sewer districts or publicly owned treatment works to take MS4 responsibility. The decision about what local government entity will oversee the stormwater program must be left up to local communities to decide and in many cases mandating a local sewer district to assume MS4 responsibility may run counter to applicable local and state laws.

*Option 2: Require Additional Chesapeake Bay-only MS4 Provisions*

As stated above, NACWA is concerned that additional Chesapeake Bay-only MS4 provisions will place a very difficult regulatory and financial burden on utilities within the Bay watershed that are already struggling with affordability concerns and the requirements of the Chesapeake Bay TMDL. NACWA would also like to point out that some of the additional minimum control measures for the Bay watershed that EPA is considering related to turf management, pesticide usage, fertilizer usage, and buffer widths run the risk of establishing federal control over local land management choices. This in turn could create significant political backlash at the local level and place MS4 utilities in a very difficult position to try and enforce these potential new requirements. There is also a question as to EPA's legal authority to create such restrictions on local land use.

NACWA also believes that any Chesapeake Bay-only provisions impacting local land use decisions must be accompanied by a substantial public education program. The public must understand the impacts of their daily activities on receiving waters, and if there is not an active and ongoing public education program, any stormwater rule that is published will be less effective. For this reason, funding to help MS4 utilities educate the public should be included with any new stormwater requirements.

*Option 3: Require Retrofitting of Stormwater Management Controls with Improved Stormwater Control Measures*

NACWA has significant concerns with new regulations that would require MS4 utilities located in the Chesapeake Bay watershed to retrofit existing areas of development within the stormwater sewer system. Such an approach would be very expensive and place a tremendous financial burden on local communities at a time of severe economic crisis. EPA's own estimates for stormwater retrofits in the Chesapeake Bay watershed, as outlined in the Agency's draft Bay strategy document, approach \$8 billion. Simply put, municipalities do not have the resources to meet these costs. Any new stormwater requirements in the Chesapeake Bay watershed promulgated by EPA that include a mandate for

retrofitting of existing development will likely be met with strong municipal opposition. If mandatory retrofits are required, federal funding for such retrofits is a necessity, as unfunded requirements will only result in increased stormwater fees on municipal customers who have already been burdened by significant sewer rate increases required for EPA-mandated combined sewer overflow and sanitary sewer overflow reduction projects. NACWA understands the need to address existing impervious areas but this is best done through each redevelopment project and not a wholesale change to existing impervious surface.

NACWA also believes it is extremely problematic for EPA to be considering the imposition of significantly higher stormwater costs on municipalities around the Chesapeake Bay watershed at a time when many federal government facilities within the watershed are refusing to pay stormwater management fees to their local clean water utilities. The lack of federal leadership regarding payment of stormwater fees, most recently exemplified by the decision of the U.S. Government Accountability Office not to pay stormwater fees to the District of Columbia, significantly undercuts EPA's efforts to address stormwater issues within the Chesapeake Bay watershed. NACWA strongly encourages EPA to work with other federal agencies to ensure all federal government facilities within the Chesapeake Bay watershed pay their fair share of local stormwater fees.

#### *Option 4: Establish New and Redevelopment Standards*

NACWA is concerned with some of the Chesapeake Bay-specific stormwater requirements currently under consideration by EPA with respect to the establishment of new development and redevelopment standards within the watershed. Although NACWA agrees that these approaches and other green infrastructure-based solutions can play an important role in reducing water quality impairments, there should not be a mandate for their use. Instead, we suggest EPA take an incentives based-approach to encourage the use of these practices until there is a better understanding of the actual environmental benefits that would be achieved by their use as compared to the significant financial costs that they could impose on communities.

When creating new development and redevelopment standards, NACWA encourages EPA to be sensitive to the unique challenges facing redevelopment projects, particularly in economically depressed urban areas within the Bay watershed. Many large cities rely on redevelopment projects in industrial or economically depressed areas to revitalize neighborhoods, attract new business and residents, and increase the tax base. Overly restrictive stormwater requirements for redevelopment that ultimately deter investors and developers from pursuing urban redevelopment projects will be counterproductive economically, socially, and environmentally. It is imperative that federal environmental mandates not unnecessarily impede the redevelopment so desperately needed by many of urban centers in the Chesapeake Bay region. This sensitivity may speak to the need for different standards between urban redevelopment, with all its attendant social and economic implications, and new development in previously undisturbed suburban and exurban areas.

#### **Environmental Justice Considerations**

NACWA is supportive of EPA's recent efforts to increase the focus on environmental justice (EJ) issues as part of the Agency's consideration of Chesapeake Bay-specific stormwater controls. NACWA further believes that true environmental progress cannot be achieved in this country unless it is shared

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in equitably by all. However, NACWA is concerned that EPA has not sufficiently considered the affordability challenges facing many urban communities around the Bay watershed as the Agency elevates EJ considerations as a key policy focus. This is particular true in the context of low-income populations, specifically identified as part of the EJ consideration, that are already finding it difficult under the current economic climate to afford the increased water and sewer rates that come with new environmental mandates. These rates will only rise as local governments within the Chesapeake Bay region must find additional funds to cover the cost of increased stormwater requirements. These affordability concerns facing low-income populations are real, will only continue to grow, and demand serious attention from EPA if the Agency is committed to making EJ considerations part of the rulemaking effort. Please feel free to visit NACWA's [Money Matters – Smarter Investment to Advance Clean Water webpage](#) to learn more about these important affordability issues.

Thank you for the opportunity to provide these comments. Please do not hesitate to contact me at [ngardner-andrews@nacwa.org](mailto:ngardner-andrews@nacwa.org) or 202/833-3692 if you have any questions or would like to discuss these comments further. NACWA looks forward to continued dialogue with EPA during the development process of Chesapeake Bay watershed stormwater regulations.

Sincerely,

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

Nathan Gardner-Andrews  
General Counsel