

Testimony of:

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**Subcommittee on Water Resources and Environment  
House Transportation and Infrastructure Committee  
U.S. House of Representatives  
July 25, 2012**

## Introduction

Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee, thank you for the opportunity to appear before you today. My name is George Hawkins and I am the General Manager of the District of Columbia Water and Sewer Authority, now more commonly known as DC Water. I also serve as the Chair of the National Association of Clean Water Agencies' (NACWA) *Money Matters* Task Force, responsible for providing strategic guidance on new approaches to Clean Water Act (CWA) affordability. It is my pleasure to be testifying on NACWA's behalf today.

NACWA's primary mission is to advocate on behalf of the nation's clean water agencies, also known as publicly owned wastewater treatment works (POTWs), and the communities and ratepayers they serve. NACWA public agency members collectively treat approximately 80 percent of the nation's wastewater. The employees of these agencies are public servants and true environmentalists who ensure that the nation's waters are clean and safe, meeting the strict requirements of the CWA.

NACWA applauds the Subcommittee for holding this important hearing on the issue of the U.S. Environmental Protection Agency's (EPA) final *Integrated Municipal Stormwater and Wastewater Planning Approach Framework* (the framework). NACWA has played a leadership role in advocating for an integrated planning approach and is pleased to see EPA's continued leadership on the issue of prioritizing clean water investments to maximize water quality gains and minimize impacts on already burdened municipal budgets. EPA's framework not only promises to provide significant and much-needed flexibility for many communities facing significant water quality challenges, it symbolizes the recognition that it is time to do things differently.

## Affordability Concerns and the Clean Water Act

While there is little doubt that the nation's water quality has improved as a result of the CWA, the command-and-control nature of the CWA has led to an accretion of costly regulations on the nation's communities and on the rate-paying residents and industries that foot the bill to ensure CWA compliance. The list is well-known — from wet weather-based requirements including combined sewer overflows, sanitary sewer overflows, and stormwater regulations — to specific pollutant-based requirements, such as nutrient limits and numerous other total maximum daily loads and effluent limitations. At the same time that regulations continue to expand, so too have enforcement actions. Nearly 100 cities across the country have signed off on sewer overflow consent decrees, with some costing individual communities billions of dollars — often to meet a single CWA requirement. Recently, municipal clean water agencies were also hit with a stringent reinterpretation of the Clean Air Act (CAA), which if not overturned by judicial or legislative action would force enormous costs on communities who have sewage sludge incinerators. Ideally, CAA and Safe Drinking Water Act obligations should also be considered in terms of the overall costs and affordability burdens that public agencies face.

Separate and apart from regulatory requirements, POTWs face a looming crisis with their aging network of pipes and systems that EPA estimates will cost between \$300-500 billion over the next twenty years. Communities are seeing the writing on the wall that the current prescription of rate increases and expanding municipal debt loads are not sustainable. Simply stated, absent a new approach to regulatory compliance, the future of maintaining — let alone adding to — the record of

water quality gains is at risk. POTWs are also seeing a troubling disconnect between the growing cost of additional regulatory requirements in order to achieve ever-decreasing water quality gains. In other words, communities are being forced to invest more but are increasingly getting less return on these investments. With ratepayers wanting to see the greatest bang for the buck the argument for rate increases grows more difficult as the benefits to the ratepayer become less clear.

### EPA's Integrated Planning Framework

NACWA has consistently played a leadership role in advocating for an integrated planning approach, including longstanding and related efforts over the past decades to advance a holistic watershed approach and to have EPA review and develop a more flexible and realistic approach to community affordability and financial capability determinations under the CWA. NACWA launched its *Money Matters... Smarter Investment to Advance Clean Water*<sup>™</sup> campaign two years ago to shed light on the growing financial and compliance challenges posed by CWA regulations and call for an integrated approach based on prioritizing these competing requirements to achieve maximum water quality benefit.

NACWA commends EPA for producing an integrated planning framework that provides a strong foundation for new and continued discussions between clean water utilities and the government, whether state or federal, on how best to sequence their clean water investments. As stated earlier, the framework represents a recognition on the part of the EPA that the current approach to CWA compliance is not working for communities and that more flexibility, without sacrificing water quality, is necessary.

Improved flexibility and adaptability could help alleviate the massive burden placed upon DC Water and its ratepayers with respect to two of our largest capital projects.

The first initiative is our \$2.6 billion Clean Rivers Project, aimed at controlling combined sewer overflows (CSOs) into the Anacostia and Potomac Rivers and Rock Creek. This enormous project is the result of a consent decree entered into with EPA, the United States Department of Justice, DC Water and the Government of the District of Columbia in 2005. Under the consent decree, DC Water has 20 years to construct massive conveyance and storage tunnels to capture rainwater and sewage during rain events, releasing it to our Blue Plains Advanced Wastewater Treatment Plant after storms subside. The \$1.8 billion Anacostia River portion of this project is already underway, and will eliminate 98 percent of the combined sewer overflows into the river.

Since the negotiation of our 2005 consent decree, EPA has endorsed green infrastructure approaches such as green roofs, bioswales, pervious pavement, and water quality catch basins to address CSOs in jurisdictions similar to the District of Columbia. Further, more recent EPA consent decrees have provided jurisdictions with 25 years to address CSOs instead of the 20 years allowed under the District's agreement. With that in mind, we are hopeful that the integrated planning framework may be an appropriate vehicle to help provide DC Water and EPA with additional flexibility to adapt our consent decree to allow for a rigorous pilot of green infrastructure as an alternative to the costly and large Potomac and Rock Creek tunnel projects mandated in the consent decree. If successful, this

alternative could reduce project costs and result in green job creation, improved air quality, enhanced green spaces, and expanded wildlife habitats.

Our second mammoth water quality initiative, also mandated, is the \$950 million Enhanced Nutrient Removal Project. For decades, DC Water has been a leader in restoring the Potomac River and Chesapeake Bay by improving the performance and treatment capabilities of the 370 million-gallon-per-day Blue Plains plant. In fact, DC Water was the only entity to achieve the 2010 voluntary cleanup goals for Chesapeake Bay nitrogen removal and met the voluntary reduction goals of 2000 and 1987 as well.

In 2009, the EPA issued a National Pollutant Discharge Elimination System (NPDES) Permit to DC Water requiring a reduction in effluent nitrogen to 4.4 million pounds per year. The new permit required DC Water to design and construct nitrogen removal facilities to the limit of conventional treatment technology. The project includes more than 40 million gallons of additional new anoxic reactor capacity for nitrogen removal, new post-aeration facilities, an 890 million gallon-per-day lift station, new channels and conveyance structures, demolition of existing buildings, addition of a protective sea wall and modifications to the existing facilities to enhance performance.

DC Water is proud of our achievements to date in reducing nutrients discharged from our facility to the Chesapeake Bay. However, as permit requirements imposed on point sources like Blue Plains become more stringent, it is important to recognize the diminishing return on investment large capital projects such as the Enhance Nutrient Removal Project provide. Prior permits issued by EPA reduced nitrogen from Blue Plains by 58 percent at a cost of approximately \$15 per pound of nitrogen reduced. Our new permit requires a 31 percent nitrogen reduction at a cost of approximately \$476 per pound of nitrogen reduced. It is important to keep in mind that wastewater treatment facilities such as Blue Plains account for less than 20 percent of the overall nitrogen load to the Chesapeake Bay.

It is clear that the trajectory of these regulatory requirements is unsustainable in the long term. We are hopeful that EPA's integrated planning framework will allow DC Water to prioritize its future capital projects to ensure that limited ratepayer dollars are used in the most effective manner to achieve the maximum water quality benefits. Absent significant federal funding, projects such as Enhanced Nitrogen Removal place an impactful burden on the small pool of ratepayers in the District of Columbia, many of whom are low income.

### NACWA's Focus

While the final framework clearly is an important step toward realizing the goals of the Association's *Money Matters . . . Smarter Investment to Advance Clean Water™* campaign, key questions remain as to the extent to which the framework will prove to offer the type of broad-based relief many in the clean water community are seeking.

The issue of affordability remains one of NACWA's top concerns. We will be looking closely at how this framework is implemented to assess how well it is actually saving communities and ratepayers money. We strongly believe that we can achieve water quality goals with fewer resources by using

innovative approaches and addressing the most challenging problems first. In addition, NACWA will be focused on making sure that all communities, not just those having faced or now facing enforcement actions, can use an integrated planning approach to meet their permit obligations. The true success of this approach will only occur through the normal course of the NPDES program and not through a court-driven consent decree process.

### Congress' Role

NACWA believes that Congress has an important role in ensuring the integrated planning approach is more than just a symbolic acknowledgment of the need for a new approach — Congress must help communities by encouraging broad implementation throughout the country and allowing flexible permit terms.

First, NACWA urges Congress to provide initial financial support for the development of municipal plans in pilot communities across the country. Developing an integrated plan can be a timely and resource-intensive process, and federal support can help cash-strapped communities seriously consider this new model for meeting CWA obligations. In addition, federally-funded pilot communities may report back to Congress on the cost-savings and environmental benefits they experienced under an integrated plan. Seeing wide-spread success, this may incentivize other communities around the country to embrace this approach as well. As part of this pilot effort, we suggest providing limited resources to States for them to undertake the necessary processes they need to work with communities interested in developing integrated plans.

Second, Congress should allow for NPDES permit terms to be extended up to 25 years for a community with an approved integrated plan. By allowing extended permit terms, communities who undertake the resource-intensive process of developing an integrated plan would have some assurance and certainty that their clean water investments will be secure for longer than five years. One of the drivers for seeking relief through a consent decree process is that the terms of a consent decree can extend to as many as twenty-five years. The NPDES permit process should provide the same degree of certainty. This should not be interpreted as a regulatory rollback as the core of this new initiative rests in the development of viable and prioritized compliance schedules with clear benchmarks/milestones for meeting the array of prioritized requirements.

Furthermore, EPA's framework encourages the use of innovative, cost-saving tools such as green infrastructure and water quality trading as part of a community's an integrated plan. These tools need time to develop and mature, and will not be considered viable options if only given a few years to employ.

### Looking to the Future

EPA's integrated planning initiative is a sign of the increasing awareness that the CWA is now forty years old and that existing interpretations of the Act, and perhaps the Act itself, are not ideally suited to meeting the needs of the 21<sup>st</sup> century. Often and for good reasons, discussions regarding clean water agencies focus on specific regulatory compliance issues under the CWA or how to best fund or finance an aging network of pipes and systems. NACWA hopes we can continue to work with this Subcommittee to consider targeted changes to the CWA – for example, changes to help communities

better manage wet weather issues - so that it can effectively address 21<sup>st</sup> century challenges and ensure another four decades of water quality improvement and unrivaled utility leadership.

NACWA has also long supported the creation of a dedicated source of funding for wastewater infrastructure investments to ensure that communities can meet their obligations under the Clean Water Act (CWA). A Clean Water Trust Fund, similar to those that finance highways and airports, would provide a federal contribution to supplement existing local and state revenue to address the enormous backlog of clean water projects and help communities meet CWA unfunded mandates. It would also spur efficiencies in utility management, new green technologies and research, and enhance fisheries. The time has come to embrace a 21<sup>st</sup> century approach to water that helps ensure community health and safety.

## Conclusion

The CWA is at a crossroads. EPA's integrated planning framework offers a unique opportunity to put the federal, state and local partnership back on track to help meet our communities' water quality needs while addressing real affordability concerns. The Subcommittee can play a vital role by following this effort closely and urging EPA to stay on the right course to encourage municipalities to take advantage of the framework.

NACWA recognizes the Subcommittee's concerns with the growing cost of compliance with CWA regulations — no entity is more concerned about this than NACWA — but we remain optimistic that EPA can advance its framework to address our mutual concerns. NACWA has also drafted legislation for a viable integrated planning approach that includes language to extend permit terms if necessary as well as an appropriations request for funding pilots, which we stand ready to advance with your help at the appropriate time if necessary. We look forward to continuing to work with the Subcommittee on this and other important clean water initiatives.

Thank you for the opportunity to appear before you today, I look forward to any questions the Subcommittee may have regarding my testimony.