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Via www.regulations.gov

RE: *DRAFT FY 2014-2018 EPA Strategic Plan, Docket ID No. EPA-HQ-OA-2013-0555*

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) Draft FY 2014-2018 Strategic Plan (*Draft Plan*). NACWA represents the interests of public wastewater treatment utilities across the country. Our clean water agency members treat and reclaim the majority of the wastewater generated in the United States each year. While our members are more directly engaged with EPA's work on clean water issues, the Agency's efforts related to climate and air quality, as well as chemical safety and pollution prevention, are also very relevant to the work clean water agencies do on a daily basis. NACWA's comments address portions of Goals 1, 2, 4 and 5 in the *Draft Plan* and stress the need for greater consideration of the issues that cut across the different goal areas.

Climate/Air Quality and Water Goals Should Address Cross-cutting Issues

As with previous strategic plans and other EPA policy statements, the *Draft Plan* seeks to include consideration of climate change-related impacts in water planning. The *Draft Plan* states that EPA will "take measures to incorporate climate change considerations into clean water and drinking water program planning and implementation" (p. 17) and ensure that all of the Agency's programs "are effective under future climatic conditions." NACWA envisions that this could include, for instance, consideration for how implementation of EPA's water quality standards program, which relies heavily on stream flow information, must adapt given changing weather patterns and water quantity. Missing from EPA's *Draft Plan*, however, is consideration of the greenhouse gas impacts associated with certain clean water mandates and how actions under one EPA goal area may run counter to objectives under another goal. For example, limit of technology controls that are

being imposed on clean water agencies to address nutrient discharges require tremendous amounts of energy and/or chemicals. These controls are designed to comply with Clean Water Act (CWA) total maximum daily load and permit requirements, but no consideration is given to the energy and chemical demands, and associated greenhouse gas impacts, of these requirements when they are imposed.

Clean water agencies across the country are working in a number of areas to improve their operations, reduce energy consumption – in some cases producing green energy to supply to the grid, recover resources, and generally improve the sustainability of their operations. These ‘utilities of the future’ are laying the groundwork of a new approach to managing the nation’s sewage as a resource, rather than as a waste. EPA’s increasingly stringent water quality mandates, however, can run counter to these efforts and EPA should look to address these hurdles to facilitate more innovation. EPA’s Office of Water is working hard in this area and NACWA commends the water office for developing its “Blueprint for Integrating Technology Innovation into the National Water Program”, but additional work is needed. Utilities need greater flexibility to take the risks that are often necessary when trying new and innovative approaches, and EPA must do a better job of evaluating the unintended consequences of regulatory requirements that can cut across the goal areas outlined in the *Draft Plan*.

Goal for Climate/Air Quality Should Address Key Regulatory Gaps, Seek to Support Renewable Energy Deployment

The *Draft Plan*’s climate and air quality goal notes that EPA will focus on “relatively high-risk sources, pollutants, and exposure situations” (p. 12). However, in NACWA’s experience, EPA continues to be driven by court-ordered deadlines that often do not allow EPA the flexibility to prioritize sources. Case in point is EPA’s pursuit of stringent maximum achievable control technology (MACT) standards for sewage sludge incinerators (SSIs) under Section 129 of the Clean Air Act (CAA). Despite already being subject to comprehensive, risk-based regulations under the CWA Part 503 sewage sludge regulations, SSIs are now facing emission limits that will shutter many units and require others to install tens of millions of dollars of control technology equipment. A recent court ruling has provided EPA a clear path to develop more reasonable control requirements under Section 112 of the CAA consistent with the low risk presented by SSIs, but EPA has so far made no effort to change course and NACWA is seeking to discuss the matter with EPA’s Administrator and key staff.

The *Draft Plan* includes as a key action for addressing climate change EPA’s effort to implement permit requirements for facilities that emit large amounts of GHGs to encourage “design and construction of more sustainable, efficient, and advanced processes that will contribute to a clean energy economy” (p. 9). Through the normal operation of their treatment plants, and through efforts to comply with increasingly stringent CWA requirements, a growing number of NACWA’s members are tripping EPA’s thresholds for GHG permitting. NACWA believes it is essential for EPA to move quickly to establish greater regulatory clarity on the applicability of these provisions, in particular in the area of biogenic emissions. NACWA continues to believe that biogenic emissions from wastewater treatment plant operations should not be counted when determining thresholds and requirements under CAA permitting programs. This exemption should apply because wastewater treatment is a vital function that must be carried out 24 hours a day, 7 days a week without interruption to ensure environmental and public health protection. Utilities should not be penalized under the

CAA for biogenic emissions resulting from processes used to comply with CWA and other statutory requirements.

As major users of energy and therefore indirect contributors of significant GHG emissions, clean water agencies have tremendous potential to reduce GHGs through deployment of energy recovery and generation technology at their treatment plants. NACWA is working with the Department of Energy (DOE) in this area, and encourages EPA to build on its initial efforts to engage DOE. The *Draft Plan* should include more explicit mention of this type of intergovernmental cooperation, especially with DOE as it works to establish a program plan for working on energy/water nexus issues.

Continued Focus on Nonpoint Sources is Critical, but Better Recognition of Local Role in Meeting Water Goals is Needed

NACWA commends the Agency on its continued focus on nonpoint sources under the water goal in the *Draft Plan* and its recognition that nonpoints are the nation's largest sources of pollution. As EPA's clean water programs are implemented, however, point sources, including clean water utilities, remain under constant pressure from state regulators and EPA enforcement and are often the only source required to do anything substantive to improve water quality. This is coming at an ever-increasing cost for consistently decreasing water quality benefits. Nowhere is this imbalance in EPA's water program more evident than in the control of nutrient pollution. Clean water agencies will often be identified as *de minimis* contributors to a nutrient impairment, but time and again these utilities are required to meet nutrient levels that push the limits of technology simply because they can.

Compounding this imbalance are the challenges already facing these clean water utilities, including existing CWA mandates, aging infrastructure, and revenue streams (more debt, higher rates) that have real limitations. Though EPA's options for addressing this imbalance are admittedly limited by its CWA authority, the Agency has begun to acknowledge that there are more productive, and sustainable ways to make clean water investments at the local level. EPA has taken an important first step toward restoring a partnership with local government entities through development of the Integrated Planning Framework. The *Draft Plan's* water goal should expressly recognize the role local government plays in implementing the CWA and the importance of the Integrated Planning Framework and the corresponding Affordability Framework under development.

The *Draft Plan*, in its discussion of cross-cutting strategies (p. 54), discusses a new era of partnerships, including with local governments. EPA recognizes that local governments "can be both co-implementors and regulated entities under national and state environmental laws" and that these entities are "dealing with significant resource constraints." NACWA commends EPA for acknowledging these partnerships generically, but believes that the role clean water agencies and local governments play in ensuring that the water goals are met merits more specific recognition.

Chemical Safety/Pollution Prevention Goal should Include Discussion of Cross-Media Impacts

NACWA's clean water agency members continually face challenges in complying with the CWA as a result of the discharge of chemicals/substances or other materials by industrial, commercial, or residential sewer users. For decades clean water agencies have had authority to regulate industrial and commercial discharges that may

interfere with treatment processes or pass through treatment plants and harm the environment. But clean water agencies have no authority to regulate discharges from residential sources. Household chemicals, disinfectants, antimicrobials, indoor pesticides and pesticidal products (like nanosilver) and other substances approved for use by EPA eventually find their way to a wastewater treatment plant. As analytical capabilities have advanced, clean water agencies are now able to detect these and other substances, like pharmaceuticals, in their effluent and biosolids that previously went unnoticed. NACWA's members are now facing the potential for regulations designed to limit the discharge of these chemicals that EPA's toxic substance and pesticide office continues to approve and allow in products. EPA's chemical safety and pollution prevention goals should acknowledge this growing problem and identify actions to help prevent unintended consequences for the nation's clean water utilities.

NACWA recently initiated a new campaign that highlights the importance of pollution prevention and the unintended consequences of improper use of the toilet or sewer system as a trash can. NACWA's "Toilets Are Not Trashcans" initiative is focused on protecting the pipes, pumps, plants and personnel at clean water agencies by reducing the harmful materials that are flushed or drained into the sewer system. These products include wipes, pharmaceuticals, paper towels, feminine hygiene products, dental floss, FOG (fats, oils, and greases), as well as product additives such as triclosan. Part of this campaign will focus on getting EPA to better recognize the water impacts of decisions made by its chemical safety and pollution prevention office.

Enforcement Goal Makes Progress but Interim Measures for Next Generation Compliance Initiative Fall Short

Though EPA's enforcement program continues to include sewer overflows as a top priority, Agency staff at all levels have shown an increasing willingness to work with local governments to craft solutions that protect the environment and are sustainable for the community. The *Draft Plan* acknowledges that EPA will use "common sense and affordable approaches to tackle the most important problems first" (p. 43), a reference to EPA's Integrated Planning Framework and associated efforts related to affordability. The *Draft Plan* also recognizes the importance of green infrastructure and the multiple benefits it can bring to a community.

NACWA is encouraged by EPA's efforts to look for ways to better encourage compliance through its 'Next Generation Compliance' initiative. NACWA does not believe, however, that the interim measures EPA has identified relating to e-reporting and public use of 'compliance transparency tools' (e.g., ECHO) will achieve the objective of measuring the effectiveness of EPA's enforcement and compliance assurance activities. Instead, NACWA suggests an interim measure related to the first element of the 'Next Generation Compliance' initiative, regulations and permits that are easier to implement. The number of regulations and/or permits developed with ease of implementation in mind would serve as a better interim measure.

In addition, NACWA believes the time has come for a far more serious and long-term, cross-media discussion to take place at EPA. The enforcement office must build on its work with the Office of Water and in a climate-driven world air and water issues must not be seen as isolated issues, to be addressed in their own silos. Further, all levels of government must work together to achieve shared water quality goals, but these goals must be defined in the broader context of environmental protection. We can achieve progress under existing statutory structures, but cannot be handcuffed by it.

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NACWA appreciates the opportunity to comment on the Draft Plan. Please contact me at chornback@nacwa.org if you have any questions or would like to discuss our comments further.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback", with a stylized flourish at the end.

Chris Hornback

Senior Director, Regulatory Affairs