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July 29, 2014

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Via Electronic Mail: [Weiss.Kevin@epa.gov](mailto:Weiss.Kevin@epa.gov)

Dear Kevin,

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the March 4, 2014 draft of EPA's Financial Capability Assessment Framework (Draft FCA Framework) and wants to commend EPA for its efforts to develop a more workable approach to Clean Water Act affordability. As you know, since the 2004-2005 timeframe, NACWA has advocated for a wholesale revision to the 1997 guidance, *Combined Sewer Overflows: Guidance for Financial Capability Assessment and Schedule Development*, in particular the methodology for evaluating affordability that relies on percent of median household income (MHI). Confounded by inconsistent implementation across EPA's Regional Offices, NACWA's members who have engaged in negotiations with the Federal government have been frustrated by the adherence to this methodology, which simplifies a complex issue down to a single figure. For this reason, NACWA has developed several white papers underscoring its concerns and has actively pursued legislation urging EPA to revise this now outdated guidance.

NACWA understands EPA's reluctance to make wholesale changes to its methodology as it provides the Agency with a consistent benchmark with which to evaluate community financial capability and it has served as the benchmark for enforcement actions for nearly two decades. The Agency, however, has heard the concerns raised by NACWA, the U.S. Conference of Mayors, and others and has developed the Draft FCA Framework to "provide greater clarity" on how community financial capability will be assessed. The Draft FCA Framework is a significant step forward on this issue and NACWA commends EPA for its continued efforts to finalize the document. The Framework provides valuable information on the breadth of additional factors that will be considered in the context of a financial capability assessment, the scope of financial obligations EPA

will include (which is broader than it has been in the past) and how EPA does not intend MHI to provide firm break points for what is and is not affordable.

NACWA provided input to the U.S. Conference of Mayors on the March 4 draft that was incorporated into the Mayors' markup provided to the Agency earlier this year. The markup prepared by the Mayors, together with the National League of Cities and the National Association of Counties, accurately reflects NACWA's input and the Association has nothing further to add with the exception of the issues raised below.

EPA often points out that the 1997 guidance has always included much of the flexibility and consideration of additional factors that the Draft FCA Framework outlines. Unfortunately, in practice, this flexibility was often overlooked or, in most cases, utilities were simply not informed that it was even an option. The additional detail from the Agency on which factors can be included and how they will be considered, as contained in the Draft FCA Framework, is welcome. The key going forward, however, will be ensuring that all of EPA's Regions implement all aspects of the Framework faithfully and that it becomes more than just a supplement to the 1997 guidance or an eloquent rephrasing of the guidance with little value added through implementation. In fact, NACWA suggests that the Draft FCA Framework be messaged not as a mere supplement to the 1997 guidance, but instead as the Agency's most current thinking on affordability that supersedes previous guidance. NACWA understands that EPA is not willing to move away from its reliance on the 1997 guidance, but the Draft FCA Framework could be revised to indicate that the 1997 guidance simply provides more details on the underlying methodology, and that the principles in the new Framework should be the primary guide for all assessments going forward. NACWA also wants to make sure this Framework works in a complementary way with the Integrated Planning Framework, which seeks similar flexibility in carrying out Clean Water Act requirements.

In addition, NACWA suggests that EPA make it clearer in item 1 under "Principles to Guide Financial Capability Assessment" that utilities and communities can use other financial capability assessment approaches, with the understanding that the Federal government will also require the information necessary to complete the assessment as set out in the 1997 guidance. As currently drafted, item 1 notes that utilities "have the option of submitting additional information describing their financial conditions" suggesting that such information is only a supplement. EPA should make it clear that utilities can use any approach they choose as long as they also provide EPA with the information necessary for the Agency to conduct its own assessment. The more sophisticated utilities have already begun to do so and EPA's recognition of this reality would help to alleviate NACWA's concerns that utilities will feel boxed into a corner and forced to use only EPA's methodology.

Long-term, NACWA continues to believe that the methodology in the 1997 guidance should be revisited. EPA's Environmental Finance Advisory Board concluded in 2007 that significant revisions were needed and it is important that we do not ignore those recommendations given the major impact these decisions have for communities nationwide. In the meantime, the Draft FCA Framework, when finalized, will provide additional clarity on this important issue.

Again, thank you for the opportunity to comment on the March 4 draft of the FCA Framework. Please contact me should you have any questions.

NACWA Comments on Draft FCA Framework

July 29, 2014

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Sincerely,

A handwritten signature in black ink, appearing to read "Chris Hornback". The signature is fluid and cursive, with a large initial "C" and a stylized "H".

Chris Hornback

Senior Director, Regulatory Affairs