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**Ken Kirk**

April 8, 2015

Attention: Docket ID No. EPA-HQ-OA-2011-0156

U.S. Environmental Protection Agency

1200 Pennsylvania Avenue, N.W.

Washington, DC 20460

Via Federal eRulemaking Portal: <http://www.regulations.gov>

**RE: Comments on EPA's Plan for Retrospective Review under Executive Orders 13563 and 13610, Docket No. ID No. EPA-HQ-OA-2011-0156**

Dear Sir or Madam:

The National Association of Clean Water Agencies (NACWA) is pleased to provide the following comments on the U.S. Environmental Protection Agency's (EPA) plan for review of regulations under Executive Order (E.O.) 13563 and E.O. 13610 (80 *Fed. Reg.* 12372; March 9, 2015). NACWA applauds the Administration and EPA for recognizing the challenging economic conditions clean water agencies and other regulated entities often face and the importance of periodic regulatory review. NACWA represents the interests of nearly 300 public clean water utilities nationwide subject to a wide array of Agency rules, primarily those developed pursuant to the Clean Water Act (CWA). NACWA is hopeful that EPA's attempt to identify rules that may be ineffective or excessively burdensome will not prove to be merely a perfunctory exercise. If executed thoughtfully and in a timely manner, this effort can have a positive impact on the regulated community.

NACWA applauds the Agency on the steps it has taken to define and promote the 2012 *Integrated Municipal Stormwater and Wastewater Planning Framework*. The *Framework*, along with subsequent efforts to provide technical assistance funding, is commendable, and underscores EPA's recognition that municipal clean water agencies are in fact partners, working together to achieve the same water quality goals. NACWA encourages the Agency to continue this important work and to ensure that this type of partnership is more ingrained in its implementation of the CWA and the other environmental statutes that impact the clean water community. The reality remains that the clean water community is faced with a funding gap in the hundreds of billions of dollars that alone could demand every available ratepayer

dollar. Through the *Framework*, and the renewed partnership between the clean water community and EPA that it represents, we can better align the investments that cities have been and will be required to make, to address the most pressing public health and environmental needs.

Any thorough regulatory review effort must not only evaluate each regulation or policy on its own, but must also consider the inter-relationship among rules and policies and the need for prioritization. NACWA includes the word “policy” throughout this document to stress that a ‘regulatory’ review process must be applied not only to rulemakings, but also to the array of policies that serve as de facto rules under different names, including “guidance” or “criteria”.

Too often the Agency uses guidance, a broadened reinterpretation of an existing rule, criteria development, or even the decision not to regulate as a substitute for what is essentially a rulemaking. These policies often lead to requirements that place enormous cost on clean water agencies without receiving full public participation, notice and comment as well as other intra- and inter- agency review procedures. To this end, NACWA believes that this review process under E.O. 13563 and E.O. 13610 must be undertaken in the spirit in which it was conceived — to protect the regulated community and the ratepayers, households, and industries they serve from unnecessarily burdensome, costly and onerous policies.

### Electronic Reporting Requirements Should be Carefully Implemented

The regulatory review, as laid out in E.O. 13563 and E.O. 13610, has an explicit focus on transitioning from paper to electronic reporting and consolidating reporting requirements and improved technology. It also comes at a time when the Agency is working to finalize its National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. While electronic reporting in the long-term should improve the efficiency of permit-related reporting, with the ultimate goal of simplifying the reporting process, it is not a panacea. In a number of cases reported by our members, rigid electronic reporting formats have created a process that is now more difficult, more resource-intensive and potentially results in poorer data quality. Increasing the public's access to environmental management information — a major objective of EPA's e-reporting rule — can be empowering and informative, but without the proper context and careful quality assurance, that information could be misinterpreted or incorrectly identify compliance issues where none exist. Once more fully realized, electronic reporting in the long-term should help to address concerns with data quality, but sufficient implementation periods are needed and default data forms and national-level databases must be properly designed and implemented to provide the proper context and background for many of the required data elements.

### Proposed Dental Amalgam Pretreatment Standards Should be Withdrawn

While NACWA shares EPA's goal of reducing mercury and other heavy metal discharges, the proposed pretreatment standards for the dental category in the *Effluent Limitations Guidelines and Standards for the Dental Category* (79 Fed. Reg. 63257; October 22, 2014) are not needed and the proposed rule should be withdrawn by EPA. Clean water utilities are already meeting the mercury limits in their NPDES permits, as well as the mercury concentration requirements for their biosolids. When needed, utilities can and do establish their own local limits and local dental amalgam separator programs, and the results from utilities that have already done this prove that 100 percent compliance of dental offices can be achieved, even with some voluntary programs. For those that do not have a need to reduce their mercury influent or

effluent levels, establishing and maintaining a dental amalgam separator program is not an efficient use of resources, which could be spent addressing more pressing environmental problems. NACWA comments filed in February 2015 further detail the justification for withdrawal of the proposed rule.

### Sewage Sludge Incineration/Solid Waste Definition Rules

EPA is not only increasing its regulatory activity with clean water agencies in the water quality arena but also in the air quality arena. NACWA's position on EPA's rulemakings on sewage sludge incinerators (SSIs) and the definition of solid waste has been detailed in our comment efforts. The decisions, however, to regulate sewage sludge as a solid waste and to develop emission standards for SSIs under Clean Air Act Section 129 rather than 112 should be reviewed, especially in light of the D.C. Circuit's August 2013 decision in *NACWA v. EPA* and the important cost considerations that can be explored through regulation under Section 112. NACWA urges EPA to reconsider the SSI and definition of solid waste rules. This is clearly within the purview of the Executive Orders and would demonstrate the Agency's commitment to renew and maintain its partnership with the clean water community consistent with the *Integrating Planning Framework*.

### Nutrients and Water Quality Criteria Development

NACWA remains focused on nutrient-related issues and urges EPA to ensure that nutrient criteria development and implementation is driven by sound science and serious consideration of cost-benefit concerns. In the context of nutrient criteria (and water quality criteria more broadly) EPA's position is that criteria are guidance, not regulations. However, EPA uses federal criteria as a standard against which state water quality standards are compared. Where state water quality standards do not pass muster, EPA Regional offices have in some instances strong-armed the state into making revisions before finalizing the standard. This is playing out right now in Region 10 with Washington State's proposed human health criteria. These state standards serve as the basis for permit limits and TMDLs, both of which have very real consequences for regulated entities. If state standards are to be subject to rejection based on federal criteria, then those criteria should be considered to carry the weight of rulemaking. Doing otherwise constitutes another example of regulating through guidance and precluding meaningful public participation.

### Outdated NPDES Provisions, Staffing Requirements

The NPDES program has a number of requirements that are cumbersome and outdated in an era of plant modernization and automation. The Association recommends the Agency carefully examine the entire NPDES program, and mandatory staffing requirements in particular, for provisions that no longer make sense given utility operation modernization. Alternative staffing arrangements, where automation would likely be employed, will be impossible where the current regulations require mandatory staffing.

Instrumentation reliability and accuracy has vastly improved over the last 10 years. The advantages of in-line analyzers should be addressed in the regulations and the uses added to 40 CFR Part 136 as alternatives to manual sampling and testing. This would free up personnel from manually performing process control and final effluent monitoring, allowing them to focus on other priority areas, such as maintenance and calibration. The largest obstacle in streamlining staffing, managing costs, and possible automation, is that the monitoring requirements for chlorine residual and pH are required to be

completed by a plant operator. Relieving the plant operators of this requirement would allow more efficient plant operation and reduce burden. With new Homeland Security requirements for monitoring critical infrastructure, additional plant security may be required. Resources once dedicated to sampling and analysis could address this new resource demand.

### Use Attainability Analyses and Clean Water Act Objectives

EPA should make every effort to support designated uses that best reflect the population, industrial and agricultural growth of the country since passage of the CWA in 1972. Doing so will demand a new approach to assessing the attainability of water quality standards, or at the very least, better utilization of the existing regulatory provisions governing use attainability analyses (UAAs). Clear and reasonable UAA guidelines are needed. States should more regularly assess waterbodies to determine what uses are actually attainable using more realistic guidelines, and TMDLs and permit limits should then be set to meet these reality-based, attainable standards.

NACWA appreciates this opportunity to comment and looks forward to working with the Agency to develop a sound approach to ensuring that the suite of existing regulations maximizes environmental benefit for the Nation's communities.

Sincerely

A handwritten signature in black ink, appearing to read "K Kirk". The signature is stylized with a large "K" and a cursive "Kirk".

Ken Kirk  
Executive Director