Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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May 17, 2013

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment

FROM: Staff, Subcommittee on Water Resources and Environment

RE: Hearing on "The President's Fiscal Year 2014 Budget: Administration Priorities for the U.S. Environmental Protection Agency."

PURPOSE

On Wednesday, May 22, 2013, at 2:00 p.m., in 2167 Rayburn House Office Building, the Water Resources and Environment Subcommittee will meet to receive testimony from the U.S. Environmental Protection Agency (EPA) on the Agency's proposed budget and program priorities for Fiscal Year (FY) 2014.

Similar to other budget hearings held by the Subcommittee, this hearing is intended to provide Members with an opportunity to review EPA's FY 2014 budget request, as well as Administration priorities for consideration in the Subcommittee's legislative and oversight agenda for the first session of the 113th Congress.

BACKGROUND

The President's budget request for the Environmental Protection Agency is $8.2 billion, $296 million less than the FY 2012 enacted level of funding.

Clean Water Act

The Federal Water Pollution Control Act (commonly known as the Clean Water Act (CWA)), as amended in 1972 by P.L. 92-500, in 1977 by P.L. 95-217, in 1981 by P.L. 97-117, and in 1987 by P.L. 100-4, provides for a major federal-state program to protect, restore, and maintain the quality of the Nation's waters. The Act generally has two major areas of emphasis: regulatory provisions that impose progressively more stringent requirements on industries and municipalities to reduce the discharge of pollutants and that regulate the discharge of dredged or

fill materials into wetlands, and funding provisions that authorize federal financial assistance for municipal wastewater treatment plant construction. Additional areas emphasize planning and financial and technical assistance for various geographical regions and issues.

The CWA established a goal of eliminating the discharge of pollutants into navigable waters of the United States by 1985, with an interim goal of attaining water quality that provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water by 1983. "Navigable waters" is defined in the Act as "waters of the United States, including the territorial seas" -- a term that is interpreted to include certain nonnavigable tributaries and wetlands.

Considerable controversy exists over the term "navigable waters" and the associated scope of federal jurisdiction of the CWA over waterbodies. Some interests seek to preserve a balance of power and long-term cooperative relationship between the federal government and the states with regard to water management and water quality, and argue for a limited scope of federal jurisdiction over waterbodies. This would allow states to assert jurisdiction over state waters where the federal interest in those waters is limited or nonexistent. On the other hand, other interests argue for an expansive (and some, an unlimited) scope of federal jurisdiction over waterbodies, to include most any wet areas, because of their perceived need for a strong federal, top-down role in regulating activities affecting them. Many view a strong federal, top-down approach as undermining the federal-state partnership that Congress originally envisioned for implementing the CWA.

In 2012, EPA and the U.S. Army Corps of Engineers (Corps) developed and sent, to the Office of Management and Budget for regulatory review, a document entitled *Guidance on Identifying Waters Protected by the Clean Water Act*. This guidance aims to clarify the scope of federal jurisdiction under the CWA over waters in the United States. Many, however, view this guidance as going beyond merely clarifying the scope of federal jurisdiction under CWA programs, but instead, as increasing significantly the scope of the CWA's jurisdiction over more waters and more provisions of the Act as compared to practice up to now.

EPA has the basic responsibility for administering and enforcing most of the CWA, and is responsible for implementing the National Pollutant Discharge Elimination System (NPDES) permitting program under section 402 of the CWA. Under the NPDES program, it is unlawful for a facility to discharge pollutants into navigable waters, unless the discharge is authorized by and in compliance with an NPDES permit issued by EPA (or by a state, under a comparable approved state program).

EPA shares responsibility with the Corps for implementing the dredge and fill (wetlands) permitting program under section 404 of the CWA. Under the wetlands permitting program, it is unlawful for a facility to discharge dredge or fill materials into navigable waters, unless the discharge is authorized by and in compliance with a dredge or fill (404) permit issued by the Corps.

The CWA does not contemplate a single, federally-led water quality program. Rather, Congress intended the states and EPA to implement the CWA as a federal-state partnership

where the states and EPA act as co-regulators. The CWA established a system where states can receive EPA approval to implement water quality programs under state law, in lieu of federal implementation. These states are called authorized states. Under the CWA, 46 states currently have authorized programs.

EPA administers several water quality programs under the CWA, including those whose proposed budgets are discussed below.

Clean Water State Revolving Loan Funds

The Clean Water State Revolving Loan Fund (SRF) program is a highly successful program administered by states to provide capital, including low interest loans, to local communities around the country to make wastewater infrastructure improvements and to address other water quality needs. To date, Congress has provided $35 billion in grants to help capitalize 51 Clean Water SRFs. With the 20 percent state match and the fact these funds earn interest, receive loan repayments, and are used to secure state-issued bonds, the return on this federal investment has been in the order of 2.7 to 1. These federal capitalization grants have resulted in SRFs funding over $95.4 billion in loans to date for wastewater infrastructure projects, plus nonpoint source pollution control and estuary management projects.

For FY 2014, the President's budget is requesting $1.1 billion to further capitalize these funds. This is $371 million less than the FY 2012 enacted level of $1.5 billion.

During prior Congresses, the Subcommittee has held numerous hearings on financing water infrastructure projects. The hearings examined how our Nation can bridge the large funding gap that now exists between water infrastructure needs and current levels of spending, how we should fund water infrastructure projects in the future, and who should pay for it. The Subcommittee also has looked at reducing infrastructure needs and costs through improved asset management, so-called green infrastructure in appropriate circumstances, and the use of decentralized and nonstructural approaches for managing wastewater and stormwater.

The Subcommittee has looked at various mechanisms for funding water infrastructure projects, including continued support of the Clean Water SRFs, creating a national clean water trust fund, and advancing other infrastructure financing techniques, such as establishing a state clean water fund and an associated fee system.

In addition, the Subcommittee has evaluated potential innovative financing tools, including public or private funding and investment (project financing) mechanisms, to better enable local communities to finance wastewater (and drinking water) facilities mandated by state and federal environmental laws and regulations. This includes private financing through private activity bonds and other public-private financing arrangements.

Last Congress, the Subcommittee examined draft legislation the Subcommittee had prepared, entitled the Water Infrastructure Finance and Innovation Act (WIFIA). WIFIA would establish additional financing mechanisms to supplement the state revolving loan fund programs in addressing the need for funding water infrastructure projects and is in part modeled after the

Transportation Infrastructure Finance and Innovation Act (TIFIA) program implemented through the Secretary of Transportation. The WIFIA program would provide federal credit assistance in the form of direct loans and loan guarantees to finance significant water infrastructure projects and would be governed by the Federal Credit Reform Act of 1990.

Special Purpose Infrastructure Grants

Special purpose infrastructure grants are funds made available to address unique clean water regional needs. This total includes $5 million for U.S.-Mexico Border wastewater infrastructure projects, which is $8 thousand more than the FY 2012 enacted level. Budget also proposes $10 million for infrastructure assistance for Alaska Rural and Native Villages, slightly more than the FY 2012 enacted level of $ 9.9 million.

Nonpoint Source Funding

The Administration's budget request proposes $164.5 million for the Clean Water Act's nonpoint source grants program (section 319), which is the same as the FY 2012 enacted level for this program. Section 319 of the Clean Water Act is the primary source of EPA grant funding to states for the control of non-point sources of pollution, which is now the single largest source of impairment to the Nation's rivers, lakes, and near-coastal waters.

Geographic (Regional) Programs

- The President's Budget requests $300 million for the Great Lakes Restoration Initiative, which is $480,000 more than the FY 2012 enacted level of $299.5 million.
- The Chesapeake Bay program request is $72.9 million, $15.6 million more than the FY 2012 enacted level of $57.3 million.
- The Long Island Sound program request is $2.9 million, approximately $1 million less than the FY 2012 enacted level of $3.96 million.
- The Lake Champlain program request is $1.4 million, $1 million less than the FY 2012 enacted level of $2.4 million.
- The San Francisco Bay program request is $4.5 million, $ 1 million less than the FY 2012 enacted level of $5.84 million.
- The Puget Sound program request is $17.2 million, $12.8 million less than the FY 2012 enacted level of $30 million.
- The South Florida program request is $1.7 million, $354,000 less than the FY 2012 enacted level of $2.1 million.
- The Gulf of Mexico program request is $4.5 million, approximately $1 million less than the FY 2012 enacted level of $5.5 million.
- The Lake Pontchartrain program request is $948,000, $1 million less than the FY 2012 enacted level of $2 million.
- Requested funding for the National Estuary Program is $27.2 million, $213,000 more than the FY 2012 enacted level of $27 million.

State Water Quality Management (Section 106) Programs

The Administration's budget request proposes $258.7 million for state and tribal pollution control assistance programs under section 106 of the CWA. The section 106 program generally supports state and tribal water quality improvement and monitoring programs. The enacted level for this program in FY 2012 was $238.4 million.

The budget requests $15.1 million for state wetlands program development, the same as the FY 2012 enacted level..

The budget requests zero funding for beaches protection monitoring grants in FY 2014, $9.9 million less than the FY 2012 enacted level.

EPA Priorities, Community Challenges, and the Need for Greater Regulatory Flexibility Under the Clean Water Act

Communities face numerous regulatory pressures and inadequate infrastructure issues related to the Clean Water Act. The needs of municipalities to address aging and inadequate water infrastructure are substantial. According to studies by EPA, the Congressional Budget Office, and the Water Infrastructure Network, the cost of addressing our Nation's clean water infrastructure needs over the next 20 years could exceed $400 billion, roughly twice the current level of investment by all levels of government.

The needs are especially urgent for many areas trying to remedy the problem of combined sewer overflows (CSOs) and sanitary sewer overflows (SSOs), often associated with wet weather conditions, and for communities lacking sufficient independent financing ability. In recent years, EPA (and activist groups, through citizens suits) has stepped up enforcement actions against many municipalities in an effort to force them to eliminate their CSOs and SSOs.

These enforcement actions have resulted in many larger cities and smaller municipalities entering into enforcement settlements, by signing consent agreements with EPA (and activist groups) to implement enforceable plans to eliminate their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

The projected total cost to larger municipalities of implementing the terms of each of these settlements could end up being as much as between $1 and 5 billion per city, or even more in some instances. There are approximately 746 communities, located in 31 states and the District of Columbia, with combined sewer systems and CSO issues potentially facing these sorts of costs.

Many more communities have SSO issues. EPA estimates that there are at least between 23,000 and 75,000 SSOs per year (not including sewage backups into buildings), amounting to an estimated three to ten billion gallons a year of untreated releases.

In recent years, other regulatory issues also have become national priorities, which are placing a further demand for resources on municipalities' utilities. For example, while our Nation's wastewater utilities already have removed the vast majority of conventional pollutants

from municipal wastewater, looking forward, they face significantly higher costs to remove the next increment of pollutants plus to control pollutants from urban stormwater runoff.

EPA has initiated a national rulemaking to establish a potentially far-reaching program to regulate stormwater discharges from newly developed and redeveloped sites and to add to or make other regulatory requirements more stringent under its stormwater program. This includes possibly expanding the scope of the municipal separate storm sewer systems regulatory program, establishing and implementing a municipal program to regulate stormwater discharges from existing development, imposing specific requirements for transportation facilities, and establishing and implementing stormwater regulations specific to the Chesapeake Bay watershed. This stormwater rulemaking, which EPA may propose in the next couple of months, could cost communities additional billions of dollars in regulatory compliance costs if promulgated, thereby imposing substantial additional regulatory and economic burdens on municipalities to comply.

In addition, EPA has begun zealously pressing the states and local governments to adopt a new framework for managing nutrients pollution, including crafting numerical nutrients criteria, setting strict numerical regulatory requirements, including numerical standards and TMDL load reduction goals for pollutant sources, and adopting stringent numerical nutrient standards and stringent effluent limits for nutrients in NPDES permits for municipal and other dischargers of nutrients. Stringent effluent limits for nutrients in NPDES permits could mean that many municipalities would have to install and operate, at great expense, state-of-the-art nutrient treatment and removal technologies at their wastewater treatment plants. These requirements will add an additional layer of regulatory requirements and economic burdens to communities.

Many communities are struggling to afford the Clean Water Act's numerous requirements being imposed on them by EPA. While schedules for compliance can sometimes be negotiated with the EPA, these are sometimes undone by other enforcement actions or judicial actions initiated by citizen suits. The result is that often communities are faced with a variety of overlapping clean water requirements and have difficulty affording the competing regulatory requirements and controlling the schedule of when work can be carried out to meet these requirements.

Although there are a number of federal programs to assist communities in meeting their clean water responsibilities, a large portion of these federal regulatory mandates are going unfunded by the federal government. Rather, local governments are being expected to pay for more and more of the costs of these mandates, with the result that local governments have made substantial increases in investments in public water and wastewater infrastructure in recent years and local communities and ratepayers are increasingly paying more. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, grants, bonds, and user fees.

Communities would like to have more flexibility to move forward in a cost-effective manner. Municipalities are seeking a more collaborative approach where EPA and state water regulators work more like partners than prosecutors with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues

through the use of best engineering and innovative approaches at the lowest cost, resulting in the greatest environmental benefits.

It appears that EPA may be starting to listen to municipalities' concerns. In 2012, EPA announced a new integrated planning and permitting regulatory prioritization initiative to allow municipalities to prioritize their multitude of water quality requirements and address the huge unfunded costs associated with the growing number of requirements stemming from EPA water rules and enforcement actions.

The policy was initially received by some stakeholders with cautious optimism and hope that the framework will be a step forward in dealing with mounting financial obligations facing cities under the CWA. But many have said that it is too early to tell how EPA's integrated planning process will play out.

Some are concerned that EPA is not willing to limit its enforcement efforts against municipalities, which have been driving costly infrastructure upgrades to reduce stormwater and sewer overflows during heavy storm events. They would prefer that EPA provide more compliance assistance and identify pilot project communities to demonstrate how this framework can be successfully applied. They are concerned that a continued emphasis on an enforcement approach will undermine the flexibility EPA is ostensibly seeking to provide. Many also are concerned that EPA is resisting setting a clearer affordability threshold for determining municipalities' financial capabilities to pay for all of the unfunded mandates.

It remains to be seen how EPA's finalized integrated planning and permitting regulatory prioritization initiative will turn out.

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), commonly referred to as Superfund, was enacted to develop a comprehensive program to clean up the Nation's worst abandoned or uncontrolled hazardous waste sites. EPA has the major responsibility for carrying out this Act. The law makes designated responsible parties pay for hazardous waste cleanups wherever possible and provides for a hazardous substances trust fund, commonly referred to as the Superfund, to pay for remedial cleanups in cases where responsible parties cannot be found or otherwise be held accountable. Superfund is also available for responding to emergency situations involving releases of hazardous substances. In addition, the law was intended to advance scientific and technological capabilities in all aspects of hazardous waste remediation.

The total Superfund request is $1.2 billion, approximately $33.4 million less than the FY 2012 enacted level of $1.2 billion. Under the President's budget request, all of this funding will be derived from a payment from general revenues into the Superfund Trust Fund. Even though Superfund is a cost recovery statute, the Administration's budget requests (as it has the past few years) the reinstatement of the taxes that historically funded the Superfund Trust Fund, including taxes on oil, gas, and chemical feedstocks, and a corporate environmental tax, which funded the Superfund program between 1980 through 1995.

Superfund Response Actions

The President's budget requests the following amounts for Superfund response actions: $539.1 million for Superfund remedial actions, $25.9 million less than the FY 2012 enacted level of $565 million; and $187.8 million for Superfund emergency response and removal actions, $1.8 million less than the FY 2012 enacted level of $189.6 million.

Superfund Enforcement

The President's budget requests $185.3 million for Superfund enforcement activities. This is $1.5 million less than the FY 2012 enacted level of $186.7 million. The budget also includes $8.8 million for Superfund enforcement activities at federal facilities, $1.4 million less than the FY 2012 enacted level.

Brownfields

Brownfields are former industrial or commercial properties that contain contaminated soil (and possibly groundwater) that must be remediated before the land can be returned to productive use. Cleaning up and reinvesting in these properties encourages redevelopment of existing underutilized urban and suburban areas, reduces blight, protects the environment, and takes development pressures off greenspaces and working lands. The Brownfields Program is designed to empower states, communities, and other stakeholders in economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfield properties.

Congress passed the Small Business Liability Relief and Brownfields Revitalization Act in 2002, which amended CERCLA by providing funds to states and local communities to assess and clean up brownfields; clarifying CERCLA liability protections for potential brownfields property investors; and providing funds to enhance state cleanup programs.

The Brownfields Program has resulted in numerous accomplishments, including leveraging more than $14 billion in brownfields cleanup and redevelopment funding from the private and public sectors and leveraging approximately 61 thousand new jobs. The Brownfields Program has been a major incentive for economic revitalization and urban redevelopment in many communities.

The Administration's budget request proposes $157.6 million for the Brownfields Program, including $85 million ($9.8 million less than FY 2012 enacted levels) for grants to localities to assess and cleanup brownfields, and $47.5 million ($1.8 million less than FY 2012 enacted levels) for states and Tribes to establish or enhance their response programs. In addition, $26 million ($2.3 million increase) is requested to fund contracts and EPA's brownfields program employees.

Oil Spill Response

CWA Section 311 provides EPA and the U.S. Coast Guard (USCG) with the authority to establish a program for preventing, preparing for, and responding to spills that occur in navigable waters of the United States. EPA is primarily responsible for spills in inland waters, and the USCG is primarily responsible for spills in coastal waters.

The Oil Spill Response program funds EPA's program for preventing, preparing for, and responding to oil spills. The President's budget requests $17.1 million, $2.4 million more than the FY 2012 enacted level of $14.7 million. This revenue is derived from the Oil Spill Response Trust Fund.

WITNESSES

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