



**Committee on Transportation and Infrastructure
U.S. House of Representatives**

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Washington, DC 20515

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July 18, 2014

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SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Water Resources and Environment Subcommittee Hearing on “Integrated Planning and Permitting Framework: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality”

PURPOSE

The Water Resources and Environment Subcommittee is scheduled to meet on Thursday, July 24, 2014, at 10:00 a.m., in Room 2167 of the Rayburn House Office Building, to receive testimony from a city mayor, a county commissioner, a city director of environmental services, and an interstate water pollution control commission executive director on the status of the Environmental Protection Agency’s (EPA) integrated planning and permitting initiative and legislative efforts being made to supplement the program.

BACKGROUND

The Water Resources and Environment Subcommittee has jurisdiction, under the Clean Water Act (CWA), over water quality and wastewater infrastructure programs administered by EPA. Title III of the CWA establishes the technological and water quality-based treatment requirements for point source dischargers, including municipalities’ wastewater treatment works. Title IV of the CWA establishes the National Pollutant Discharge Elimination System (NPDES) permit program for the discharge of pollutants from wastewater treatment works and certain municipal storm sewer systems. Title VI of the Clean Water Act provides for the establishment and capitalization of Clean Water State Revolving Loan Funds (SRFs) to aid in funding the construction of wastewater treatment works and other wastewater infrastructure around our Nation.

It is widely accepted that clean drinking water and public wastewater services are necessary priorities to sustain public health, support our economy, and protect the environment. Significant amounts of public resources have been devoted to water infrastructure in American

communities over the last 40 years to meet these priorities. An impressive inventory of physical assets has been developed over this period.

Our Nation's wastewater infrastructure includes 16,000 publicly-owned wastewater treatment plants, 100,000 major pumping stations, 600,000 miles of sanitary sewers, and 200,000 miles of storm sewers. Since 1972, with the enactment of the CWA, federal, state, and local investment in our national wastewater infrastructure has been over \$250 billion. This investment has provided significant environmental, public health, and economic benefits to the Nation. Our farmers, fishermen, manufacturers, and tourism industries rely on clean water to carry out activities that contribute well over \$300 billion to our economy each year.

However, our Nation's ability to provide clean water is being challenged, as our existing national wastewater infrastructure is aging, deteriorating, and in need of repair, replacement, and upgrading. Old and deteriorated infrastructure often leak, have blockages, and fail to adequately treat pollutants in wastewater, thereby creating water pollution problems.

The needs of municipalities to address wastewater 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 systems with insufficient capacity to address wet weather conditions, and for communities lacking sufficient independent financing ability. In recent years, EPA has established the elimination of CSOs and SSOs and contaminated stormwater as a national enforcement priority, which has resulted in focused enforcement attention on those municipalities with these ongoing challenges.

EPA enforcement actions have resulted in many larger cities and smaller municipalities entering into enforcement settlements, by signing consent agreements with the U.S. government 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.

Additionally, there have been a number of additional federal and state regulatory obligations imposed on communities to address other ongoing water quality challenges that are placing a further demand for resources on municipalities' utilities. A large portion of these obligations are going unfunded by the federal and state governments. In the absence of increased federal and state financial resources, the cost of many of these obligations ultimately rests with local governments and ratepayers. Today, local government provides the majority of the capital required to finance water infrastructure investments through loans, grants, bonds, and user fees.

Need for Greater Regulatory Flexibility and Prioritization

Municipalities have urged EPA officials to provide the communities with increased flexibility to comply with the Clean Water Act's wastewater and stormwater requirements, especially given municipalities' dwindling revenues due to the economic downturn.

Municipalities have argued that integrating stormwater and wastewater requirements has the potential to help address municipalities' concerns because it would encourage EPA to further evaluate a municipality's financial capabilities to address pending requirements, and to prioritize investments in wastewater and stormwater management based on the greatest public and environmental health benefit and in recognition of a municipality's ability to pay. Municipalities are encouraging EPA to prioritize and support those activities that provide the highest environmental return per dollar spent.

Municipalities have long asked for the authority to holistically address the statutory obligations facing them, and have the flexibility to establish CSO and SSO containment strategies that best reflect local circumstances.

Municipalities are seeking a more collaborative approach where EPA and state water regulators work with communities to yield better solutions that achieve the goal of eliminating sewer overflows and addressing other water quality issues.

EPA's Integrated Planning and Permitting Initiative

In January 2012, EPA formally released a proposed framework, entitled *Draft Integrated Planning Approach Framework*, to provide EPA, states, and local governments with guidance to develop and implement effective integrated planning approaches to municipal wastewater and stormwater management. The proposed framework identified EPA's vision of operating principles and essential elements of an integrated municipal wastewater and stormwater management plan.

Through public workshops and written comments, stakeholders urged EPA to, among other things, be proactive in collaboratively assisting communities across the Nation, as pilot demonstration communities, to develop integrated plans that will show how EPA, state regulatory agencies, and local communities can all work together to implement flexible, practical, and affordable wet weather solutions in a more integrated, cost-effective, and flexible manner, and also pass muster with the regulators; to create a new EPA national integrated wet weather compliance permit that supersedes any and all local water quality permits for a set trial period and that includes all regulatory requirements under the CWA; and to take into account a pilot community's "capability to pay" when determining monetary investment into an integrated wet weather improvement plan and permit.

In June 2012, EPA released the issuance of their final framework, entitled *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*. (The final framework document is dated May 2012, and the framework's cover memo is dated June 5, 2012; see copy of memo and framework, attached.) The seven-page document outlines principles for letting

communities structure plans for addressing multiple CWA obligations one at a time in an effort to reduce costs. The final integrated planning framework is similar to the draft.

EPA's framework is intended to provide EPA regional offices and states with a guide on how to help cities prioritize costly wastewater and stormwater infrastructure improvements that are needed to address water quality issues, including preventing CSOs, SSOs, and other pollution releases during heavy precipitation events.

The final 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. Many noted that how EPA implements the policy will be critical to evaluating its success, as there is not a lot of detail in the final policy.

The document indicated that the Agency will rely on both permits and enforcement actions to implement the new integrated approach. The Agency says plans developed using the framework cannot be the basis for delaying either permits or enforcement actions.

Some municipal groups have criticized the policy because they believe it includes inconclusive language saying that a financial capability plan should be conducted and included as a reference point in the plan, and that such an assessment "should take into consideration current sewer rates, stormwater fees, and other revenue, planned rate or fee increases, and the costs, schedules, anticipated financial impacts to the community of other planned stormwater or wastewater expenditures, and other relevant factors impacting the utility's rate base," but it does not set a definitive affordability threshold (for example, of two percent of a community's median household income) as the maximum amount that all infrastructure can cost.

There have been extensive discussions between EPA and stakeholders concerning the affordability framework for CWA compliance. Stakeholders are pushing for financial considerations beyond median household income (MHI), which, municipalities believe, labels a cost that is less than two percent of MHI as "affordable." The affordability framework being discussed is designed to support EPA's integrated planning framework.

Municipalities are also urging EPA to consider the cost of a municipality's Safe Drinking Water Act (SDWA) obligations when assessing the community's ability to pay for CWA compliance. EPA has stated that "[while] costs for drinking water treatment and distribution would not be used to estimate metrics such as the residential indicator [i.e., MHI indicator] identified in EPA's Financial Capability Assessment guidance, the financial burden associated with projects not required by the CWA may be considered when evaluating the overall financial health of a community."¹ The affordability discussions between EPA and stakeholders are continuing.

Many stakeholders are pleased that the final policy includes new language endorsing the use of adaptive management practices to ease communities' ability to comply with permit and enforcement requirements. Many believe the inclusion of adaptive management language is

¹ EPA's "Integrated Municipal Stormwater and Wastewater Planning: Frequently Asked Questions", dated July 15, 2013.

encouraging, because it means that there is some acknowledgment by EPA that circumstances surrounding a project do sometimes change.

Finally, in May, 2014, EPA announced the availability of federal funding to municipalities for technical assistance in developing municipal integrated plans. EPA requested interested communities to apply for this funding, totalling \$335,000, which EPA stated would likely assist up to five communities to develop integrated plans. The application process for the funding ended in June; however, EPA has yet to announce the recipients.

Relevant Legislative Proposals

In June, 2014, the President signed the Water Resources Reform and Development Act (WRRDA) of 2014 into law (Pub. L. 113-121). WRRDA, among other things, amends the CWA to increase the affordability of wastewater infrastructure funding for municipalities. For example, WRRDA increases the length of time for which municipalities can repay loans from the Clean Water SRF from 20 years to 30 years, thus increasing the affordability of this funding to local communities. In addition, WRRDA authorizes state infrastructure managers to provide additional subsidization to communities with affordability concerns (based on low-income populations). Finally, WRRDA encourages communities, as they develop their wastewater treatment plans, to develop plans to reduce water and energy consumption, which, over the long-term, should result in reduced costs to communities.

There are several legislative proposals under development that attempt to address the various issues and concerns related to EPA's integrated planning initiative. These proposals include H.R. 2707 (Clean Water Compliance and Ratepayer Affordability Act of 2013), H.R. 3862 (Clean Water Affordability Act of 2014), and the draft bill entitled the Water Quality Improvement Act of 2013.

The Clean Water Compliance and Ratepayer Affordability Act of 2013 was introduced by Rep. Steve Chabot (OH-1) in September 2013. The bill requires selection by EPA of at least 15 municipalities for participation in a pilot program geared toward a cooperative effort between EPA and the communities to develop wastewater and stormwater strategies that are both flexible and cost-effective in a manner consistent with EPA's Integrated Municipal Stormwater and Wastewater Approach Framework. This bill would allow for the prioritization of CWA requirements by a municipality according to the most cost-effective and environmentally-beneficial outcomes. Also provided is clarity on the standards a municipality's integrated plan must meet in order to be approved.

The Clean Water Affordability Act of 2014 was introduced by Rep. Robert Latta (OH-5) in January of 2014. The bill is an amendment to the CWA and would require the Administrator of EPA to look at publicly-owned permittees, such as a publicly-owned treatment works, and create an integrated planning approach to the permittees' permit and pollutant discharge obligations. Additionally, the bill attempts to establish mechanisms to give additional assistance to municipalities experiencing significant financial hardship raising the funds to complete wastewater treatment construction projects and activities required of them under the CWA.

Finally, a draft bill (the Water Quality Improvement Act of 2013) is being circulated by several members of the U.S. Conference of Mayors to address concerns with CWA requirements and provide greater flexibility to cities in addressing the federal regulatory mandates being imposed on them. The draft bill seeks to address CWA mandates through a partnership between municipalities and the federal government and takes steps to allow for and encourage the issuance of integrated permits. Among other things, the draft bill requires EPA to issue at least one integrated permit in each of the 10 EPA regions within one year of the draft bill's enactment, prohibits EPA from imposing penalties for past violations on a municipality that has come forward with a desire to achieve CWA compliance, and requires EPA to update its affordability guidance. Additionally, the draft bill authorizes \$3 billion per year, for five years, in federal grants to help fund controls and updates required by the CWA. This amount is less than three percent of the \$111 billion that is spent annually by municipalities to meet water and wastewater mandates.

At Thursday's hearing, the Subcommittee on Water Resources & Environment will hear from state and local government representatives to get their views on the status of negotiations on the final framework, in addition to thoughts on the foregoing proposed legislation related to the integrated permitting initiative. The complete list of witnesses for the hearing follows, below.

WITNESSES

Mr. David Berger
Mayor of the City of Lima, Ohio
[representing the U.S. Conference of Mayors, Mayors Water Council]

Mr. Todd Portune
Commissioner
Hamilton County, Ohio Board of Commissioners

Mr. Steven Meyer
Director of Environmental Services
City of Springfield, Missouri
[representing the National Association of Clean Water Agencies]

Mr. Ron Poltak
Executive Director
New England Interstate Water Pollution Control Commission
[representing the Association of Clean Water Administrators]