



**WRITTEN STATEMENT FOR THE RECORD**

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**ON BEHALF OF THE NATIONAL ASSOCIATION OF COUNTIES**

**BUILDING A 21<sup>ST</sup> CENTURY INFRASTRUCTURE FOR AMERICA: IMPROVING WATER QUALITY  
THROUGH INTEGRATED PLANNING**

**BEFORE THE SUBCOMMITTEE ON WATER RESOURCES AND ENVIRONMENT  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE  
UNITED STATES HOUSE OF REPRESENTATIVES**

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WASHINGTON, D.C.**

Thank you Chairman Graves, Ranking Member Napolitano and members of the subcommittee, for the opportunity to testify on “Building a 21<sup>st</sup> Century Infrastructure for America: Improving Water Quality through Integrated Planning.”

My name is Todd Portune and I am an elected county commissioner from Hamilton County, Ohio where I currently serve as Chairman of the Hamilton County Board of Commissioners. Today I am representing the National Association of Counties (NACo).

### **About NACo**

Founded in 1935, NACo is the only national organization that represents county governments in the United States, bringing together county officials to advocate with a collective voice on national policy, exchange ideas and build new leadership skills, pursue transformational county solutions, enrich the public’s understanding of county government and exercise exemplary leadership in public service.

### **About America’s Counties**

Counties are highly diverse, not only in my state of Ohio, but across the nation, and vary immensely in natural resources, social and political systems, cultural, economic and structural circumstances, and public health and environmental responsibilities. Counties range in area from 26 square miles (Arlington County, Virginia) to 87,860 square miles (North Slope Borough, Alaska). The population of counties varies from Loving County, Texas, with just under 100 residents, to Los Angeles County, California, which is home to nearly ten million people. Of the nation’s 3,069 counties, approximately 70 percent are considered “rural,” with populations less than 50,000, and 50 percent of these have populations below 25,000. At the same time, there are more than 120 major urban counties, which collectively provide essential services to more than 130 million people each day.

County governments exist to deliver public services at the local level, with accountability to our constituents and communities as well as to state and federal authorities. In fulfilling this mission, counties are not only subject to state and federal regulations, but also help to implement them at the local level. Although county responsibilities differ widely between states, most states give their counties significant authorities. These authorities include construction and maintenance of roads, bridges and other infrastructure, assessment of property taxes, record keeping, running elections and overseeing jails, court systems and public hospitals. Counties are also responsible for child welfare, consumer protection, economic development, employment/training, land use planning and zoning, and environmental protection.

In the arena of the Clean Water Act (CWA), counties play a key role as co-regulators and regulated entities in protecting the environment and providing public water services for our residents and businesses. As regulators, counties are often responsible for controlling water pollution at the local level. We may enact rules on illicit discharges, remove septic tanks and adopt setbacks for land use plans, and may be responsible for water recharge areas, green infrastructure, water conservation programs and pesticide use for mosquito abatement. We also provide extensive outreach and education to residents and businesses on protecting water quality and reducing water pollution.

Additionally, counties own and maintain vast amounts of public infrastructure, including 45 percent of America's road miles, nearly 40 percent of bridges, drinking water utilities, wastewater treatment plants and stormwater infrastructure, all of which are subject to federal water CWA rules.

### **About Hamilton County, Ohio**

While Hamilton County is considered "urban" with a population close to 808,000 residents, we have a diverse mix of urban and suburban communities. The county lies in southwestern Ohio and encompasses 413 square miles. The county seat is Cincinnati, the third largest city in Ohio. Our primary job market is comprised of professional and business services, manufacturing, finance, management, higher education systems, health care and small businesses. In fact, Hamilton County is the home of such well-known companies as Procter & Gamble, Kroger, and Macy's.

Most of Hamilton County is served by the Metropolitan Sewer District of Greater Cincinnati (MSDGC), which is a County Sewer District formed under the Ohio Revised Code in the 1920's. Almost 300,000 households rely on MSDGC and its footprint includes all of the older, core areas of the community.

Since 2006, the county and MSDGC have been the lead defendant under a consent decree for CWA noncompliance. The litigation was filed by the U.S. Environmental Protection Agency (EPA), the Ohio Environmental Protection Agency and the Ohio River Valley Water Sanitation Commissioner (ORSANCO), a multi-state entity formed by Congress to oversee the Ohio River. A consent decree is a legal term used to depict a settlement sanctioned by orders of the court.

Under the 2006 signed consent decree, in addition to existing operation, system repair and infrastructure maintenance costs, the county and its taxpayers are required to invest over three billion dollars in extra projects and upgrades. As of January 2019, the county will have spent over one billion dollars to meet these goals, with two billion more to go.

## **Counties of all sizes can benefit from integrated planning**

The topic of this hearing is of great importance to local governments that are co-regulators under federal Clean Water Act (CWA) regulations.

Over the past several decades, we have seen the convergence of a “perfect storm” upon our local governments and citizens. This includes the rising expenses associated with CWA wastewater-related wet weather consent degrees and tighter stormwater requirements and the limited capability of our counties and residents to absorb these additional outlays.

In some counties, the cost of mandated CWA obligations have ranged from hundreds of millions to billions of dollars per county. Since many wastewater and stormwater systems are partially (or wholly) funded through user fees, this leads to huge rate increases for our residents.

Recognizing these challenges, in 2012, the EPA released its [“Integrated Municipal Stormwater and Wastewater Planning Approach Framework”](#) (Framework) as a supplemental to its 2011 memorandum on “Achieving Water Quality Through Stormwater and Wastewater Plans.” The Framework was intended to drive reforms both within the EPA regions and local communities to holistically address the high cost of water infrastructure. Essentially, integrated planning offers local governments an opportunity to meet a multitude of federal clean water requirements by bundling and prioritizing their water quality mandates. However, numerous challenges remain to the Framework’s nationwide adoption.

Today, I would like to focus my remarks on three key points:

- **Integrated planning can help counties address the growing list of Clean Water Act needs.**
- **Integrated planning offers a path for counties to meet the growing universe of CWA regulations in an environmentally-sensitive, streamlined and cost-effective manner.**
- **Congress can play a role in protecting water quality and ensuring water affordability by passing legislation in Congress to support integrated planning.**

### **Integrated planning can help counties address the growing list of Clean Water Act needs.**

**First, the number of complex federal requirements and unfunded mandates on counties, both within and outside the CWA Act, has risen sharply.**

Federal agencies have been issuing an increasing number of regulations in recent years. This growing number of regulations comes at a time when counties—regardless of size—are experiencing

significant fiscal constraints and our capacity to fund compliance activities is often limited. Furthermore, according to NACo's County Economies report released this past February, only one in four of the nation's 3,069 counties have fully recovered to pre-recession economic conditions.

Even if the economic picture was improved for counties, states put significant restrictions on our ability to generate local revenue. In fact, more than 40 states limit counties' ability to collect sales and/or property tax. Some states also limit counties' ability to levy taxes for environmental mandates such as fees on solid waste, water and/or sewer services.

An example of this hails from California. In 1996, voters in the state passed Proposition 218, the "Right to Vote on Taxes Act," which requires prior voter approval for any new tax changes at the county or city level. This change was significant for local governments who used the local tax base to pay for citizen-requested programs and services and state and federal requirements. Proposition 218 is especially relevant to California counties, as they face some of the strictest state and federal stormwater requirements in the nation.

San Diego County is an urban county of 3.3 million residents and over 4,526 square miles in southern California. Over the past 25 years, although the county has made substantial investments in its stormwater management program, it has become increasingly difficult to fund. Within the county's existing National Pollutant Discharge Elimination System (NPDES) stormwater permit, the county is required to address several Total Maximum Daily Load (TMDL) water pollution numeric limits. For one TMDL on bacteria, it is estimated that this requirement alone will cost the county close to \$567 million over the 20-year compliance schedule.

This puts the county in a difficult position. Under Proposition 218, the county needs voter approval to raise the funds to comply with the 2011 TMDL requirement on bacteria. If the voters vote down an increase, the county will either have to make cuts to other key non-environmental county programs or face stiff CWA penalties from state and federal regulators.

**Second, in the past several decades, the federal government has been using litigation-driven consent decrees and administrative actions to drive tighter local CWA requirements for combined sewer overflow (CSO) and sanitary sewer overflow (SSO) at wastewater treatment plants.** Since the 1990's, EPA and the U.S. Department of Justice (DOJ) have levied high civil penalties on these counties and cities out of compliance.

There are at least 781 sewer districts from across the county that are under consent decree, in litigation or under threat of litigation for CWA compliance issues. The litigation and/or the cost of implementing a consent decree is extremely expensive and ratepayers are often forced to shoulder the cost, as there are no federal funds (other than a limited amount for loans from the CWA State Revolving Fund program) to assist sewer districts to achieve compliance.

Miami-Dade County, located in the southeastern-most tip of Florida, has a population of approximately 2.6 million and encompasses 2,431 miles. Since the mid-1990's the county has been operating under a CWA consent decree, last revised in 2013, for stormwater and wastewater compliance issues. Under the settlement, the county must upgrade three regional wastewater treatment plants and its sewer collection system, at an estimated cost of \$1.6 billion. Additionally, the county paid a civil CWA penalty of \$978,000 (\$511,800 to the United States and \$466,200 to the State of Florida) for previous CWA violations.

While most wastewater treatment plants process stormwater through their primary treatment plant before it is released, for CSO and SSO, the system is designed to "overflow" the increased "wet weather" runoff around the primary treatment plant to a secondary, less stringent treatment system. In recent years, the EPA has attempted to ban CSO and SSO activities. By EPA's own calculation, this would cost over \$150 billion nationwide to implement. The cost would be borne by units of local government running the wastewater facilities, which may or may not be able to pass this cost onto residents in the community.

That is why CWA regulations cannot be calculated in isolation from the other responsibilities and requirements that the federal government places on counties.

**Third, our nation's water infrastructure is aging rapidly and replacement needs are fast outpacing available funds.** Local governments fund the majority of all water and wastewater investments but many of our drinking and wastewater treatment facilities, including plants, pumps and pipes, have far exceeded their life cycle. Some of these systems were built over 75-100 years ago, and with limited funding, local governments have been unable to undertake needed upgrades.

In Hamilton County, we have approximately 3,000 miles of sanitary and storm sewer lines. While the suburban parts of MSDGC largely have newer piping systems, the urban core has an older network of pipes. Parts of this system are very old and are vulnerable to collapse. Additionally, we are now experiencing significant and unexpected damages from major isolated and sudden storm events, which have overwhelmed the system, caused significant damage and added to the MSDGC operating

costs. In the past several years, we have averaged about \$50 million a year on maintenance and repairs alone.

**Finally, increased costs from federal mandates, consent decrees and aging infrastructure are adversely impacting our distressed communities.** Over the past ten years alone, over \$40 billion in mandated CWA wastewater and stormwater upgrades were required for communities large and small nationwide. Many of these communities are located in regions that continue to face the worst economic downturn in decades. Since many wastewater and stormwater systems are partially (or wholly) funded through user fees, this leads to a huge rate increase for our residents.

This is further complicated since many user-rate based systems are in higher density areas, which tend to have a large population of disadvantaged individuals. The cost per capita to replace and upgrade aging water systems bears an even larger burden on residents in these distressed communities, which can impact cost share options and take up a significant portion of a community's budget.

Hamilton County, especially in its urban core that includes the City of Cincinnati, is a distressed community. Countywide, a little over ten percent of our county households earn less than \$10,000. Within Cincinnati city limits, over 17 percent make less than \$25,000 a year. In the past 15 years, the poverty rate in Hamilton County has grown from 11.8 percent to 18.3 percent; the poverty rate in the City of Cincinnati, meanwhile, grew from 21.9 percent to 30.5 percent.

These disadvantaged families will be impacted the most by increased sewer rate fees and they will end up paying unaffordable, punitive sewer rates if the current rates of spending continue. Given the increasingly poor state of my county and many other urban counties, the financial impact of the combined CWA burdens on our citizens is being placed disproportionately on low-income individuals.

And, to the extent programs are created to lighten the burden on those under the poverty line, even higher burdens are then shifted onto the working poor and the middle class.

Let me stress that the combined weight of the consent decree, annual operations, management and other obligations are crushing to our citizens. Here are some key facts just on my county:

- Of MSDGC's annual wastewater budget of \$439 million, over \$119 million – or 27 percent – is now spent on debt to finance work, and that amount is projected to soar to close to \$400 million per year if current spending rates continue;

- From 2003-2014, MSDGC's average wastewater user fee bill increased almost nine percent;
- The average quarterly MSDGC bill per household was \$211 in 2015, but due to our CWA consent decree and other costs, the quarterly invoice is estimated to soar to \$687 by 2037 unless something is done to protect ratepayers;
- The average annual MSDGC bill is about \$800 – while the average annual property tax assessment on a \$100,000 home is just under \$400; and
- According to the 2016 Hamilton County Affordability Task Force report, over 16,560 MSDGC accounts are in delinquency status.

My county is not an isolated case. Communities like mine have been dealing with the fallout associated with a combination of high employment, housing foreclosures, declining water and sewer uses and increased mandates under CWA consent decrees.

**Integrated planning offers a path for counties to meet the growing universe of CWA regulations in an environmentally-sensitive, streamlined and cost-effective manner.**

Integrated planning is an idea that has been around for a while. Many states are already utilizing and encouraging the use of integrated planning. Contrary to EPA's existing Framework, integrated planning has not been widely used at the federal level. However, EPA's Integrated Planning policy offers several advantages over the traditional way of mandating CWA responsibilities.

**First, while participation is voluntary in integrated planning, counties must opt-in, and the final plan will be incorporated into existing NPDES stormwater permits, rather than enforcement orders, administrative actions or consent decrees.** This allows the federal, state and local governments to work together to come up with a technically feasible plan.

A key part of integrated planning is that it will not exempt counties and other local governments from federal CWA requirements. It does not preempt existing federal law; it just allows a community with multiple CWA-related permits to have flexibility in those requirements.

**Second, integrated planning will help counties prioritize water quality and infrastructure goals based on the most pressing issues.** Under the CWA, counties may be dealing with a multitude of CWA mandates ranging from wastewater treatment upgrades, aging infrastructure, CSOs, SSOs, NPDES, municipal separate storm sewer system (MS4) permit requirements and TMDL water quality limits.



Under an integrated plan, we would be allowed to prioritize those programs that give our community the best bang for the buck, while protecting the environment and keeping water costs down.

For example, if a county has twenty pipes breaking a day at a cost of several thousand dollars each and a CSO that only overflows every several years, what is the most immediate problem that needs to be addressed? Keep in mind that without functioning pipes, the utility is unable to deliver water to customers, which means less revenue to pay for the required upgrades. Under integrated planning, counties, cities and utilities will work in partnership with federal and state governments to determine those answers.

**Third, integrated planning will help communities simplify competing requirements from separate wastewater and stormwater programs.**

To further compound the problem, wastewater and stormwater programs are often managed under two separate CWA permitting frameworks and regulated differently from each other. At the county level, this means that these permits are likely implemented by separate county departments that may have competing priorities.

A case in point: Palm Beach County is an urban county of 1.4 million residents in southeastern Florida that encompasses 2,383 square miles. While the county directly operates both wastewater and stormwater infrastructure, these activities occur in different county departments and administrative structures. For example, the Water Utilities Department oversees the county's four wastewater treatment plants and participates in the governance of another wastewater plant jointly managed by several local utilities and operated by the city of West Palm Beach. Wastewater activities are funded through established wastewater user rates, which are tied to the U.S. Bureau of Labor Statistics Consumer Price Index for Utilities.

But, on the stormwater side, Palm Beach County is one of 40 co-permittees to the CWA Phase 1 Palm Beach County MS4 Permit, for which the Northern Palm Beach County Improvement District is the lead permittee. A steering committee coordinates the joint implementable activities of the permit and each co-permittee develops its own Stormwater Management Program (SWMP) as required under CWA.

Funded through the county's general fund, SWMP is overseen by the county's Department of Environmental Resource Management and implemented by the county's Roads and Bridges division in the Engineering Department. The departments oversee SWMP for projects and measures

associated with structural controls, redevelopment sites, roadways, flood control, municipal waste treatment, storage and disposal facilities, pesticide and fertilizer application, illicit discharges, industrial and high risk facilities and construction site runoff.

Essentially, integrated planning gives counties the flexibility to merge their multiple CWA permits and requirements into one plan, which helps counties meet their CWA obligations, save money and prioritize local water projects.

**Fourth, integrated planning provides more flexibility for counties to try new, innovative approaches, such as green infrastructure, while improving water quality and saving their citizens money.** Under current federal policies, local governments are given little incentive to experiment and try new ideas. If a project fails, we face federal and state penalties, which disincentivizes counties from taking these risks.

While much of the discussion on integrated planning has focused on CSOs and SSOs, other counties have been assessing how to use integrated planning for other CWA-related issues. For example, Miami-Dade County, Florida is evaluating whether they can capture and store surplus water from their wet season. Additionally, the county is trying to find viable uses for reclaimed wastewater to meet other water needs.

Under integrated planning, counties will have more freedom to try new ideas, like natural green infrastructure systems, without fear of federal and state agencies cracking down on them if their plan is not successful. This autonomy will allow other communities to build upon ideas and ultimately save money.

**Congress can play a role in protecting water quality and ensuring water affordability by passing legislation in Congress to support integrated planning.**

While initially promising, in reality, EPA's Integrated Planning Framework has not been used to the extent that it could be, mainly because EPA regions have been reluctant to use the principles in the field. This is counterproductive to our shared goal of clean water. In my experience, EPA regional offices are relying on an outdated model that relies more on civil penalties rather than incentives.

To date, EPA has approved very few integrated plans. The consent decrees themselves are unrealistic in their assessment of a community's ability to pay to meet CWA requirements. Unless EPA is fully committed – financially, legally and technically – the Framework will fall into oblivion. But, if used

consistently and broadly across all EPA regions, the Framework can be a valuable instrument in the toolbox to help local governments meet CWA water quality goals while keeping water rates affordable for our citizens.

A number of bills have already been introduced in both the U.S. Senate and the U.S. House of Representatives, including the “Water Quality Improvement Act” (H.R. 465) and the “Water Infrastructure Flexibility Act” (S. 692, H.R. 1971 and H.R. 2355). **We thank the sponsors of these bills and we support your efforts to swiftly pass legislation that would codify EPA’s Integrated Planning Framework to help local governments comply with the CWA in a more flexible and cost effective manner.** Through your efforts, we may yet be able to work collaboratively with the federal and state governments to craft reasonable policies that accomplish environmental goals and provide affordable water to our citizens.

As Congress moves forward with legislation, we would like to reiterate the importance of providing greater detail on affordability and other related issues, which would be helpful to spur implementation of EPA’s Framework:

**Affordability concerns:** Any legislation on integrated planning needs to provide greater detail on affordability concerns. While EPA has developed tools to measure the ability of communities to pay for additional CWA requirements, EPA relies heavily on its median household income (MHI) criteria to determine affordability. Under MHI, EPA looks at the total one year utility cost for a residential customer and the median household income for all customers to determine what is affordable.

For example, if the agency uses a two percent MHI for Hamilton County’s \$49,000 average annual household income, the base water rate would be set at \$980 per year. This rate is not affordable for our low-income populations, who would then be paying close to ten percent of their annual income on yearly sewer costs.

We recommend that any legislation should instruct the EPA to review and revise their guidance on affordability for CWA compliance measures to better gauge a community’s true financial capability to pay for these CWA mandates. This would include efforts to eliminate the MHI as a primary tool to gauge community affordability.

**Flexibility to meet CWA goals:** Counties must be allowed the flexibility to try new, innovative approaches in meeting the objectives of the CWA to ensure the investments make sense and are cost-affordable for our already stressed ratepayers.

As part of Hamilton County’s consent decree, MSDGC was required to develop a \$3.1 billion Wet Weather Improvement Plan that requires large investments in “gray” infrastructure – deep tunnels that store stormwater runoff to be treated during dry periods through our sewer treatment plants. We believe that by using more innovative green infrastructure approaches to correct CSOs, SSOs, and stormwater impacts during wet weather events, can provide significant savings to our ratepayers over the long-term. Communities must be able to develop alternative wet weather management approaches to lessen the financial impact, and have indeed found that they can achieve the same or better water quality results at a lower cost using locally-driven solutions that combine watershed approaches, green infrastructure, low impact development, gray-build infrastructure and other innovative techniques to reduce wet weather impacts.

**Consider the costs of all federal environmental requirements:** While the Framework traditionally focuses on wastewater and stormwater, we believe integrated planning should include cost considerations all other federal environmental mandates that protect our citizens and the environment.

**Elimination of civil penalties:** In the past several decades, EPA and DOJ have increasingly relied on consent decrees to improve water quality in our communities. These consent decrees and associated civil penalties are very expensive for both counties and the citizens they represent. We recommend that Congress eliminate CWA civil penalties and instead focus on reinvesting those funds back into integrated planning efforts within that community.

**Extend NPDES permits or offer rolling permit cycles:** Under integrated planning, rather than using a consent decree, the agreements of the plan are incorporated into existing NPDES permits. However, since NPDES permits only run for five years and integrated planning efforts extend well past five years, we urge Congress to consider longer compliance schedules for NPDES permits and/or rolling permit cycles.

**Use demonstration projects:** In communities currently facing expensive CWA mandates, in addition to codifying EPA’s Framework, Congress should consider a small number of pilot projects to test and modify the framework on the ground. This will ensure EPA is working with local communities in a meaningful manner to encourage the use of innovative and flexible approaches in meeting compliance obligations under the CWA. Priority should be given to communities that are hardest hit by the cost and unaffordability of consent decree managed programs and the demonstration program should include data collection to support green infrastructure CWA programs.

**Increased funding opportunities:** While there is significant interest in integrated planning, our counties note that the primary barrier is lack of funding. The EPA often has new regulatory requirements and/or tighter permit obligations with little time available for implementation, let alone for coordinating an integrated plan for complex water systems. NACo recommends that Congress allocate funding to address these challenges.

**In conclusion**

Chairman Graves and Ranking Member Napolitano, counties are encouraged by your efforts to use integrated planning to protect water quality. We stand ready to help Congress in your efforts.

Thank you again for the opportunity to testify today on behalf of America's 3,069 counties. I would welcome the opportunity to address any questions.