



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

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May 12, 2017

SUMMARY OF SUBJECT MATTER

TO: Members, Subcommittee on Water Resources and Environment
FROM: Staff, Subcommittee on Water Resources and Environment
RE: Hearing on “Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning”

PURPOSE

The Subcommittee on Water Resources and Environment will meet on Thursday, May 18, 2017, at 10:00 a.m., in 2167 Rayburn House Office Building, to receive testimony related to “Building a 21st Century Infrastructure for America: Improving Water Quality through Integrated Planning.” Witnesses will include city mayors, a county commissioner, a state water quality program director, a public works representative, and a representative of an environmental advocacy organization. Testimony will focus on the status of EPA’s implementation of the integrated planning policy, and look at ways to help EPA, states, and municipalities in developing and implementing integrated plans that provide flexibility for municipal projects necessary to meet CWA regulatory obligations.

BACKGROUND

The U.S. Environmental Protection Agency (EPA) administers water quality and wastewater infrastructure programs pursuant to the Clean Water Act (CWA). 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.

Public wastewater and clean drinking water services are necessary to sustain public health, support our economy, and protect the environment. Significant amounts of public resources have been devoted to improving water infrastructure in American communities over

the last 45 years. 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. EPA, in its most recent analysis of capital investments necessary to meet the Nation's wastewater and stormwater infrastructure needs, documented needs of \$271 billion (as of January 1, 2012).¹ This includes capital needs for publicly owned wastewater pipes and treatment facilities (\$198 billion), combined sewer overflow (CSO) correction (\$48 billion), stormwater management (\$19 billion), and recycled water treatment and distribution (\$6 billion).² Studies by the Congressional Budget Office and the Water Infrastructure Network have identified even higher numbers.

The needs are especially urgent for many areas trying to remedy CSOs and sanitary sewer overflows (SSOs), often associated with systems with insufficient capacity to address wet weather conditions, and for municipalities lacking sufficient independent financing ability to repair or replace their wastewater infrastructure. In recent years, EPA has established the reduction of CSOs and SSOs and the reduction of pollution and volume of stormwater as a national enforcement priority, which has resulted in focused enforcement attention on those municipalities with these ongoing challenges. The EPA establishes standards for stormwater and wastewater pollution.

If cities and municipalities have not reduced CSOs and SSO's, then the EPA has been taking enforcement actions, which have resulted in many larger cities and smaller municipalities entering into enforcement settlements. In such cases, cities and municipalities sign consent agreements with the U.S. government to implement enforceable plans to address their CSOs and SSOs. Many of these settlements are costly to implement, especially in the face of dwindling EPA infrastructure funds.

There are also additional federal obligations on municipalities to address other ongoing water quality challenges that are placing a further demand for resources on municipalities. For example, while our Nation's wastewater utilities already have removed the vast majority of

¹ EPA, *Clean Watersheds Needs Survey 2012 Report to Congress*, EPA-830-R-15005 (Jan. 2016).

² *Id.*

conventional pollutants from municipal wastewater and stormwater, looking forward, they face significantly higher costs to remove the next increment of pollutants (such as nutrients) from wastewater and stormwater, as required under the CWA.

A large portion of these regulatory obligations is 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, bonds, and user fees.

Need for Greater Regulatory Flexibility and Prioritization

Municipalities are very concerned about the impacts of a lack of available financial resources on the ability of local governments to meet their compliance obligations. Organizations representing local governments, including cities and counties, note that “[l]ocal governments are at a crossroads,” and that “Cities and counties spend over \$115 billion per year to provide safe and reliable water and sewer services and maintain a vast physical infrastructure of pipes, pumps, and plants.”³ They note that “local governments, our residents, and businesses must spend additional resources to comply with numerous environment and non-environmental federal and state unfunded mandates, which further limits the money available for water infrastructure.”⁴

Given municipalities’ dwindling revenues due to competing municipal demands for resources, municipalities have urged EPA officials to provide the communities with increased flexibility and provide prioritization of the various regulatory requirements of the CWA, called integrated planning. Municipalities argue that, through integrating compliance with stormwater and wastewater requirements, they would be able to identify the most cost-effective and protective approaches to meet the requirements, and prioritize their investments in addressing such requirements.

Under such approach, EPA would evaluate a municipality’s financial capabilities to address pending requirements, and in light of those capabilities, allow a municipality to identify how it would prioritize investments in wastewater and stormwater management based on the greatest public and environmental health benefit and in recognition of the municipality’s ability to pay. This approach would give municipalities the flexibility to establish CSO, SSO, and other pollution control strategies that best reflect local circumstances and that enable them to implement innovative or sustainable technologies, approaches, and practices to comply with such requirements, including using green infrastructure measures. Further, as noted by EPA in past testimony to the Subcommittee, the integrated planning process does not lower existing regulatory standards.⁵ Municipalities are encouraging EPA to prioritize and support those activities that provide the highest environmental return per dollar spent. Municipalities are

³ Letter from the Executive Directors of the U.S. Conference of Mayors, National League of Cities, and National Association of Counties, to Congressmen Gibbs and Chabot, expressing support for integrated planning and H.R. 465 (Mar. 22, 2017).

⁴ *Id.*

⁵ Testimony of Acting Assistant Administrator Nancy K. Stoner, before the Subcommittee on Water Resources and Environment, July 25, 2012

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 Policy

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.

Stakeholders urged EPA to proactively collaborate with municipalities across the Nation, as pilot demonstration communities, to develop integrated plans as a model 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 that will pass muster with the regulators. Stakeholders also urged EPA to create a new national integrated wet weather compliance permit that supersedes all of a municipality's water quality related permits for a set period and that includes all applicable regulatory requirements under the CWA. Further, stakeholders urged EPA to take into account a municipality's ability to pay for improvements when determining the municipality's monetary investment in an integrated wet weather improvement plan and permit.

In June 2012, EPA released its integrated planning framework, entitled *Integrated Municipal Stormwater and Wastewater Planning Approach Framework*.⁶ The document outlines principles for letting municipalities structure plans for addressing multiple CWA obligations one at a time in an effort to reduce costs. EPA's framework is intended to provide EPA regional offices and states with a guide on how to help cities prioritize wastewater and stormwater infrastructure improvements that are needed to address water quality issues, including reducing 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. The document indicated that the EPA would rely on both permits and enforcement actions to implement the new integrated approach. However, EPA said 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 developed and included as a reference point in the integrated plan. Such an assessment should take into consideration current sewer rates, stormwater fees, and other revenue, planned rate or fee increases, and the

⁶ The final framework document is dated May 2012, and the framework's cover memo is dated June 5, 2012.

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.

There have been extensive discussions between EPA and stakeholders concerning the affordability framework for CWA compliance. Stakeholders are pushing for financial considerations beyond the median household income of a community, which EPA uses as an indicator of assessing the financial impact of compliance on a community. The affordability framework that has been discussed is intended to support EPA's integrated planning framework and other considerations of regulatory affordability.

Municipalities also have been urging EPA to consider the cost of a municipality's drinking water obligations when assessing the community's ability to pay for CWA compliance. EPA has said that the financial burden associated with projects not required by the CWA may be considered when evaluating the overall financial health of a community. Costs for drinking water treatment and distribution, however, would not be used to estimate metrics such as the household income indicator identified in EPA's financial capability assessment guidance.

Many stakeholders are pleased that the final policy includes language endorsing the use of adaptive management practices which help to ease communities' ability to comply with permit and enforcement requirements. Many believe the inclusion of adaptive management language is encouraging, because it means that there is some acknowledgment by EPA that circumstances surrounding a project do sometimes change.

Implementation of the Policy

Municipalities have welcomed the opportunity for flexibility under the integrated planning policy. However, they have sought clarification on a number of issues, such as how municipalities can proactively ensure that the plan they develop will be acceptable to regulators; who determines a community's most pressing water quality needs; and whether a municipality can include ongoing needs for infrastructure rehabilitation under an integrated planning approach. Some stakeholders believe that clarification is needed regarding state and EPA roles. EPA's position is that it is the responsibility of cities to work and coordinate with state permitting agencies to develop integrated plans. However, some states are uncertain what EPA's oversight role would be if EPA disagrees with a plan that a state and municipality have developed.

Examples of integrated plans are needed. In October 2014, EPA announced the availability of federal funding, totaling \$335,000, to five municipalities for technical assistance in developing municipal integrated plans. (Funding was awarded to Burlington, VT; Durham, NH; Onondaga County, NY; Santa Maria, CA; and Springfield, MO.) The five municipalities were selected from 28 communities that had expressed interest in technical assistance from EPA. The development of plans for these five municipalities remains pending.

With the planning policy in place, some municipalities have worked on developing plans pursuant to the policy. EPA officials have had discussions with some municipalities about writing and implementing integrated plans to manage stormwater and wastewater. However, five

years after EPA announced the policy, some stakeholders are concerned that integrated plans are being incorporated only into new or amended consent decrees, and not in CWA permits.

WITNESS LIST

The Honorable Pete Buttigieg
Mayor
City of South Bend, Indiana
On behalf of The U.S. Conference of Mayors

The Honorable Johnny L. DuPree, Ph.D.
Mayor
City of Hattiesburg, Mississippi
On behalf of the National League of Cities

The Honorable Todd Portune
Commissioner,
Hamilton County, Ohio
On behalf of the National Association of Counties

Mr. Craig Butler
Director
Ohio Environmental Protection Agency
On behalf of the Environmental Council of the States

Mr. William E. Spearman, III, P.E.
Principal
WE3 Consultants, LLC
On behalf of the American Public Works Association

Mr. Lawrence Levine
Senior Attorney
Natural Resources Defense Council