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On Behalf of The U.S. Conference of Mayors

Integrated Planning and Permitting Framework: An Opportunity for EPA to Provide Communities with Flexibility to Make Smart Investments in Water Quality

Water Resources Subcommittee - House Transportation and Infrastructure Committee
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Good morning. Chairman Gibbs, Ranking Member Bishop, and members of the Subcommittee, thank you for inviting me once again to address you. It was two years ago on July 25, 2012 that I was first here to address this topic of Integrated Planning, and I am pleased to be back to provide you an update from my perspective and from the perspective of The U.S. Conference of Mayors.

The U.S. Conference of Mayors is a national nonpartisan organization, representing cities of 30,000 or more through their chief elected official, the Mayor. We were formed in 1932, as a result of the Great Depression, over the issues that were facing cities at that time – high unemployment and a stagnant economy. Today we have those same issues as well as additional challenges including decaying infrastructure and unfunded mandates.

I am Dave Berger and I am in my 25th year of serving as the Mayor of Lima, Ohio. I am also in the 18th year of negotiating with Ohio EPA and USEPA over a Long Term Control Plan and my 2nd year of attempting to get approval on an Integrated Plan. As a member of the Mayors Water Council, I have participated in nearly five years of discussions around EPA's Integrated Planning Memorandum, including the issues of green infrastructure and affordability. So a significant portion of my professional life over the past quarter century has been spent on this and related matters.

I would like to cover four topics in this testimony. First, I would like to describe the challenges local governments face to maintain and improve their water and wastewater treatment systems. Second, I would like to provide the Subcommittee with an update on the dialogue between EPA and The U.S. Conference of Mayors on Integrated Planning and Affordability. Third, I would like to provide you with an update on the experiences of individual cities that are trying to gain EPA approval of Integrated Plans. Fourth, I would like to brief you on legislation that the U.S. Conference of Mayors Water Council has developed to bridge the gap between our dialogue with EPA and the experiences of individual cities and ask for your support.

I. The Challenge

Local government -- not the federal government -- is where the job of providing water and wastewater services gets done and is paid for. I am here to tell you, on behalf of the Conference of Mayors and my city, that we are on an unsustainable path when it comes to public water infrastructure investment and unfunded mandates. We must have change or we will bankrupt communities and permanently impoverish households in those communities.

Public water systems now serve most urban, suburban, and increasingly, rural populations in America. Through 2013, local governments have invested over $2 trillion in water and sewer infrastructure and continue to spend over $115 billion a year. With this investment, local governments have substantially improved drinking water and water quality.

Public water infrastructure and services are ultimately paid for by customers, many of which are residential households. They pay for the annual operations, and they pay for the borrowed capital through the rates they pay every month. Public water customers are financially exposed to rate increases regardless of the cause. The cumulative costs of unfunded federal mandates on public

water infrastructure and services that are paid by customers have reached or exceeded thresholds of clear economic burden on low and fixed income households. The burden is both substantial and widespread, affecting 25 percent or more of customers in many different cities throughout the nation. Thus, this spending has become unaffordable for families, making all too real James Baldwin's assertion, "Anyone who has ever struggled with poverty knows how extremely expensive it is to be poor."

I put this question to the Chairman and Committee Members, all whom are elected and accountable like mayors for how federal agencies interact with our local constituents -- how much of societies', of a community's resources should be dedicated to sustaining the health and environmental benefits we have achieved versus how much more should be directed by EPA to achieve national water goals if the federal government provides negligible financial assistance or regulatory flexibility?

The Mayors of this nation believe that future investments should be prioritized to first ensure the sustainability of existing public water infrastructure and associated public health, economic and environmental benefits. Additional improvements that will achieve additional benefits should be prioritized second. But investments that do not have commensurate public health, economic and environmental benefits do not belong on the priority list, even if the language of the federal laws and regulations require it. Local governments should not be forced to divert scare resources for such investments.

II. EPA Dialogue on Integrated Planning and Affordability

The Mayors Water Council (MWC) has worked directly with the U.S. Environmental Protection Agency (EPA) and the Department of Justice (DOJ) since 2009 to address concerns expressed by mayors across the country about the high cost of reinvesting in aging water and wastewater infrastructure and the added financial challenge of complying with increasing federal and state regulations. The widespread financial impacts of addressing wastewater and stormwater controls is felt by many local governments, and during this period of 'Dialogue' with EPA and DOJ we were joined in our efforts to seek greater flexibility by the National Association of Counties (NACo) and the National League of Cities (NLC). Together, counties, municipalities and townships are responsible for over 70% of all local government investment in public water systems and services.

EPA is to be recognized and commended for their high level and sustained involvement in this 'Dialogue'; including - Deputy Administrator Bob Perciasepe; Assistant Administrator Cynthia Giles; and, Acting Assistant Administrator Nancy Stoner. Through their leadership they were able to initiate a framework for change to the way the Agency works with local government on water issues. To date, the effort has resulted in a Green Infrastructure (GI) Memorandum and an Integrated Planning Memorandum sent from HQ to the EPA Regional Offices- and that is where local government says the flexibility is most needed.

Both of these memoranda provide guidance to the Regions to promote GI, and be receptive to the need for local government to prioritize water related investments. Both of the Memoranda make

possible the opportunity for local government to save money, and pass the savings and/or cost containment benefits to our citizens, especially low and fixed income households.

The third anticipated product of the 'Dialogue' is a clarification Memorandum to the Regions on how they can incorporate flexibility in the Financial Capability Assessment (FCA) process first adopted by EPA in 1997. The rigidity with which the 1997 Guidance is being implemented in the Regions is largely the reason why the Conference of Mayors, National Association of Counties, and the National League of Cities joined together in the 'Dialogue' with EPA and DOJ. We maintain that flexibility can provide some relief from financial burdens related to compliance costs without compromising on safe and clean water. This Memorandum is expected to be complete this summer.

We are working with our local government partners to help EPA draft expansions to the 1997 Guidance to incorporate a greater number of relevant factors that better characterize the unique economic situation of any community. The modifications are intended to clarify what additional local economic information should be considered by the EPA Regional staff, and how more flexibility in terms of compliance timeframes can be incorporated into the process. The MWC has also requested that EPA establish a process whereby local government can appeal to a review panel when they determine that the consent decree or permit process results in overly costly requirements. While not every local concern can or will be addressed through these Memoranda they do open the door to redefining the federal-state-local intergovernmental partnership, and the opportunity to align local public water investments with national clean and safe water goals.

In order to give credit where it is due, it must be said that sometimes EPA expresses the opinion that substantial financial distress caused by regulatory compliance costs in addition to other important costs (such as shelter costs) imposes a substantial economic burden for families. In connection with this admission, EPA has developed "affordability" criteria to indicate when such mandates would cause substantial and widespread economic distress in the community. In those cases, EPA has told us the Agency might be willing to exercise some flexibility in the mandate.

From our perspective, if EPA affordability criteria functioned properly, the economic hardship imposed on lower-income households might be alleviated in many communities by considering more flexible approaches that take advantage of longer timeframes, compliance goals that are guided by local economic conditions of the community and by prioritizing investment where the greatest public good can be achieved given limited resources.

III. City Experiences with Integrated Planning and Affordability.

While we applaud the steps that EPA has taken to date, unfortunately, local governments that are trying to address water infrastructure issues have not been afforded the flexibility and cooperation that has been discussed with EPA Headquarters.

While EPA has told us that over a dozen local governments are working on integrated plans no integrated plan has been approved and one has been disapproved. The experiences of Evansville,

Indiana, Akron, Ohio, and Lima, Ohio are summarized below. We also provide perspectives from the experiences of other communities around the country.

Evansville, Indiana

Like many cities, the City of Evansville, Indiana is addressing sewer overflow issues. Since 2004, Evansville has invested over $100 million to upgrade its stormwater and wastewater infrastructure. In May 2013, under a 2011 Consent Decree, Evansville submitted one of the first sewer overflow control plans developed using EPA's Integrated Planning Framework. Unfortunately, EPA disapproved Evansville's integrated plan last month.

Evansville's plan will reduce the number of CSO events from approximately 50 activations a year to no more than 12 and will increase the percent of the capture of CSO volume from 35 to 92%. This level of control will protect the water quality of the Ohio River (designated a sensitive area near the City) and Pigeon Creek from CSO discharges.

Evansville's plan is consistent with EPA's CSO Control Policy, which seeks to have cities reduce overflows to 0–12 times per year and increase percent capture to 75 to 100%. It also meets the requirements of the Clean Water Act, which requires protection of water quality. Further reductions are not affordable and a robust water quality analysis of Pigeon Creek and the Ohio River has shown that the waterways are significantly impaired when they reach the City and reducing the City's CSO activations to less than 12 in a typical year result in *no additional days of water quality compliance.*

To achieve these reductions, Evansville prioritizes a green infrastructure project to capture and treat all of the discharge from its largest CSO outfall in a typical year and will use additional green infrastructure projects to reduce flows elsewhere in the city.

Evansville's plan also will address SSOs by using an adaptive management approach to SSO control that focuses on continuous improvement and effective asset management.

Thus, Evansville's plan used EPA's Integrated Planning Framework to employ prioritization, green infrastructure and adaptive management to achieve environmental benefits in a manner that is the least unaffordable for the City.

The plan put forward by the City will result in an investment of $540 million (2013 dollars) in clean water infrastructure over 28 years, the largest investment in the City's history. Evansville plans to impose its rate increases to provide the funding when it is needed. However, the rate increases are front loaded and from 2014 to 2019, the annual sewer bills will double, which places a rapid and heavy burden on low income households.

As demonstrated in Table 1, below, even under the plan proposed by Evansville, by 2019 48.6% of households will be paying over 2% of their household income on sewer bills, 34% will be paying over 3.5% of their income, and over 11% will be paying 7% of their household income on their sewer bills as a result of the plan that the City has put forward. Thus, additional financial burden is not tenable.

Table 1: Residential Water and Sewer Financial Impacts of Evansville, Indiana

MHI Level	Assumed Household Income	Cumulative Distribution of MHI Level	Cumulative Distribution of In-City Customers	*% of Evansville Households in Category*	*Suggested CPH as a % of MHI (in 2019)**
Less than $10,000	$ 10,000	11.2%	5,678	11.2%	7.0%
$10,000 to $14,999	$ 12,500	20.0%	10,158	8.8%	5.6%
$15,000 to $24,999	$ 20,000	34.0%	17,286	14.0%	3.5%
$25,000 to $34,999	$ 30,000	48.6%	24,719	14.6%	2.3%
$35,000 to $49,999	$ 42,500	65.5%	33,323	16.9%	1.6%
$50,000 to $74,999	$ 62,500	83.0%	42,202	17.5%	1.1%
$75,000 >	$ 75,000	100.0%	50,864	17.0%	0.9%

* To support its plan, Evansville must double its rates by 2019; cost per household (CHP) and median household income (MHI) includes growth in both rates and MHI by that year.

In September 2013, EPA told Evansville that it thought the City could afford to spend more money addressing CSOs and SSOs but offered no details and did not respond directly to the City's financial analysis. In June 2014, EPA disapproved Evansville's $540 plan and suggested, again without providing details, that Evansville could afford a plan that would result in zero overflows.

It appears that EPA has rejected both Evansville's plan to use green infrastructure – a treatment wetlands -- and the City's affordability analysis. In fact, EPA appears to be suggesting that the City should add a grey technology treatment system to the wetland treatment system, notwithstanding the fact that the City's $540 million plan is already beyond the limit of affordability for most of its ratepayers and the wetland treatment system will meet the requirements of the Clean Water Act.

This disapproval is very disappointing in light of EPA's October 2013 Green Infrastructure Strategic Agenda. EPA Headquarters recognizes that: "Lacking familiarity with the technology, its performance, and associated performance measures, state and local permitting and enforcement professionals may be reluctant to include green infrastructure in wet weather permits and control plans." To overcome that reluctance, the Green Infrastructure Strategic Agenda directs EPA enforcement personnel to "ensure all water enforcement actions consider the use of green infrastructure" and to "consider green infrastructure approaches in the development of orders and settlements related to SSOs, CSOs and MS4s and incorporate green infrastructure as part of injunctive relief where appropriate."

This disapproval also is very disappointing in light of EPA's January 2013 memorandum on "Assessing Financial Capability for Municipal Clean Water Act Requirements." In that memorandum, EPA stated that when evaluating affordability it will look beyond the simplistic

metric of "median household income" set forth in its 1997 Guidance for Financial Capability Assessment, and consider impacts on low income households.

EPA is asking for zero overflows even though Evansville has demonstrated to EPA that any further reduction in the number of overflows *will not increase the number of days that water quality standards will be met.*

Evansville is continuing to work with EPA and remains hopeful that EPA will not seek to impose additional burdens on Evansville families, particularly when Evansville has demonstrated that increasing controls and spending more money will not lead to increased improvement in water quality.

Akron, Ohio

Despite not having an agreed Long Term Control Plan (LTCP) or consent decree, the City of Akron continued to invest in projects to address sewer overflows and spent over $300 million through 2013. To address the remaining sewer overflow issues, Akron is currently implementing a LTCP that was developed pursuant to a consent decree with EPA and the State of Ohio. This year alone the City expects to commit an additional $84 million on CSO construction projects. At the same time, the City will continue to invest in the development and design of numerous additional projects. However, Akron's plan was developed in 2011, before EPA issued its new policies on Integrated Planning and affordability. In 2012, Akron's plan was estimated to cost $865 million. To fund future projects, the City recently passed a 78% rate increase that will be implemented over a two-year period. This increase was in addition to the 74% increase which was passed in 2009. However, even with these rate increases, the City is unable to fund its plan in the future.

Late last year, the City advised EPA about the escalating cost to implement its plan. Specifically, the cost of Akron's sewer overflow control program has risen from $865 million to an estimated cost of $1.4 billion (adjusted for inflation based on the date the money is spent; $1.14 billion in 2014 dollars). Adding to this problem is the City's declining population, which has dropped from a high of 300,000 to under 200,000 residents.

To address this issue, Akron is currently working with EPA on an Integrated Plan and is using EPA's Integrated Planning Framework to identify ways to modify its plan to provide greater environmental benefits at an earlier date with lower costs. Akron is relying on EPA's commitment that it will allow cities to reopen consent decrees to employ integrated planning. Based on the increased costs of Akron's plan, it is absolutely critical that Akron be afforded the opportunity to use this tool.

The importance of integrated planning to Akron is demonstrated in Table 2, below. Table 2 shows the impact of Akron's current sewer overflow control plan on Akron citizens. Analyzing those costs by income distribution reveals that nearly 68 percent of the households within Akron would pay more than 2 percent of their income, nearly 53 percent of households would pay more than 3 percent, and nearly 15 percent of households would pay over 10 percent.

Table 2: Residential Indicator by Income Distribution of Akron

Income Distribution	Households	% of Total Households	Midpoint of Income Dist	CPI Adj	Adj Midpoint of Income Dist	Cost per Household	RI by Income Dist
Less than $10,000	12,293	14.9%	$10,000	1.00	$10,000	$1,060	10.60%
$10,000 to $14,999	7,187	8.7%	$12,500	1.04	$12,999	$1,060	8.15%
$15,000 to $24,999	12,674	15.4%	$20,000	1.04	$20,799	$1,060	5.10%
$25,000 to $34,999	11,298	13.7%	$30,000	1.04	$31,199	$1,060	3.40%
$35,000 to $49,999	12,228	14.9%	$42,500	1.04	$44,199	$1,060	2.40%
$50,000 to $74,999	13,262	16.1%	$62,500	1.04	$64,999	$1,060	1.63%
$75,000 to $99,999	6,533	7.9%	$87,500	1.04	$90,999	$1,060	1.16%
$100,000 to $149,999	4,761	5.8%	$125,000	1.04	$129,999	$1,060	0.82%
$150,000 to $199,999	1,024	1.2%	$175,000	1.04	$181,999	$1,060	0.58%
$200,000 or more	1,016	1.2%	$200,000	1.00	$200,000	$1,060	0.53%

Using EPA's Integrated Planning Framework, Akron has already identified ways to modify its plan to provide greater environmental benefits at an earlier date with lower costs and expects to complete its Integrated Plan in a few months. The City's ability to use this tool is critical to its lower income citizens.

Lima, Ohio

Lima, Ohio is a proud community of modest financial means. We have shrunk from roughly 52,000 to 38,000, as more affluent households have moved to the suburbs.

Our annual household median income is $26,943. Nearly one-third of Lima citizens live under the poverty threshold. Additionally, our demographic profile includes aging baby-boomers that comprise a substantial and growing class of fixed income seniors. Our low, moderate and fixed income households are particularly vulnerable to increasing costs of basic services.

Implementation of the proposed CSO/SSO Long-Term Control Plan will raise the average annual sewer bill in Lima to $871.62. While this increase may have little impact on our high income households, its impact on our poor households would be enormous. Our estimates of the impact of rate increases necessary to meet the proposed Plan include:

- Some 47% of households would experience rate increases above 4% of household income.
- Almost 26% of households would experience rate increases to their annual sewer bills between 2% and 3% of household income.

As shown in the table, below, if you add water and sewer costs together, the lowest income household category would be required to spend over 8.7% of their household income for water

and sewer services. Indeed, 71% of households in Lima would be paying over 2% of their income for water and sewer.

Table 3: Residential Customer Current and Projected Sewer Costs as a Percent of Actual Income of Lima, Ohio

Household Income Distribution	Household Income	Households 14,537	% of Total Households	2% MHI $572.82 As Percent of Actual Income	Annual Avg $585.24 As Percent of Actual Income	Projected $871.62 As Percent of Actual Income
Less than $10,000	10,000	2,459	16.90%	5.73	5.85	8.72
$10,000 to $14,999	12,500	1,398	9.60%	4.58	4.68	6.97
$15,000 to $24,999	20,000	2,682	18.40%	2.86	2.93	4.36
$25,000 to $34,999	30,000	1,953	13.40%	1.91	1.95	2.91
$35,000 to $49,999	42,500	1,915	13.20%	1.35	1.38	2.05
$50,000 to $74,999	62,500	2,363	16.30%	0.92	0.94	1.39
$75,000 to $99,999	87,500	937	6.40%	0.65	0.67	1.00
$100,000 to $149,999	125,000	686	4.70%	0.46	0.47	0.70
$150,000 to $199,999	175,000	123	0.80%	0.33	0.33	0.50
$200,000 or more	200,000	21	0.10%	0.29	0.29	0.44

Lima is dedicated to protecting the health and safety of its citizens, and to protecting the water quality of the Ottawa River that runs though our city. But we have to do that in a way that does not damage the city's financial standing, does not keep us from providing other essential services to our residents, and does not impose unaffordable economic burdens on the citizens and businesses who pay sewer rates. We believe that can be done, and we have seen EPA's Integrated Planning Framework as a very promising initiative that would allow us to protect the environment in an affordable, economically sensible way. Lima has been very involved in the integrated planning process since it began, both through our involvement in the U.S. Conference of Mayors and its dialogue with EPA, and through development of Lima's own Integrated Plan. We started working on that plan even before the EPA process was finalized, and we have actively engaged with EPA for more than two years on the specifics of that plan. We believe that the Lima plan does exactly what the EPA Integrated Planning Framework calls for: it addresses each of the city's major compliance obligations, setting up a long-term schedule for implementing new controls that takes into account the city's financial resources and prioritizes the controls based on environmental risks and impacts. This is the kind of plan that EPA should be promoting to other communities as a model to be followed. Yet, more than two years after the Integrated Planning Framework was issued, we are still waiting for EPA to say "yes" to Lima's integrated plan, so we can move ahead to implement that plan.

In this context, Lima is frustrated, not only with the amount of time and expense dedicated to this process, but also with the nature and persistence of the hurdles yet being encountered. In this regard, we have talked with other communities about their experiences, and we have found that they are dealing with similar challenges. EPA staff stipulates deadlines to turn around

information and then does not respond in similar timely ways. While headquarters prioritizes Integrated Planning, the Regional Offices actively resist proposals that require flexibility, longer timetables, and priority setting, and focus instead on high cost approaches, fixed deadlines, and penalties. While headquarters acknowledges that cities and their citizens have financial constraints, the Regional Offices minimize the arguments about burdensome costs and unrealistic time tables. While headquarters embraces the idea that cities have shared stewardship roles for improving the environment, the regional offices of both EPA and DOJ sometimes use bullying tactics and threats of near term federal court actions. And while headquarters has been helpful in trying to move the process forward for Lima, we still do not have approval on our Integrated Plan.

The Lima experience is not unique. Cities around the nation are finding that little or no change has occurred in the regional offices in dealing with the challenges of the Clean Water Act. While we applaud the continuing engagement and good faith efforts of EPA headquarters, we must report that the message is not getting through to the regional offices.

IV. The Water Quality Improvement Act

While we have had a good dialogue with EPA on Integrated Planning and Affordability in D.C, unfortunately, we have not seen as much progress on the ground, in individual communities. To fill the gap between EPA assurances and EPA action, the Mayors Water Council developed the Water Quality Improvement Act (attached) which we are seeking Congressional support and sponsors.

This draft legislation builds on and reflects experience with EPA's Integrated Planning Framework and addresses the need for a federal-local government partnership to address affordability and flexibility. The principles embodied in the legislation were endorsed by the U.S. Conference of Mayors and adopted at the 81st Annual Meeting in June 2013 (attached).

Restoring Federal-Local Government Partnership

In the past, the federal government funded about 75% of the infrastructure that brought most cities into compliance with secondary treatment standards. This federal cost share made the federal government a partner in upgrading treatment plants and improving water quality. And, because the federal government was spending its own money as well as city money, the federal government paid close attention to ensuring that improvements were cost effective.

Currently, the federal government provides about $2.35 billion a year in capitalization grants for both the drinking water state funds and the wastewater state funds. These funds give loans to cities which are paid back by the revenue raised from ratepayers and thus add to the costs borne by the ratepayers. This funding is a very small fraction of the over $115 billion that cities spend each year on water and wastewater.

Our draft legislation would begin to address this issue by authorizing $3 billion in grants a year for 5 years for sewer over flow control grants, treatment plant upgrades, stormwater controls, and to retire related debt and thus provide real relief to local communities and families.

Currently EPA seeks penalties from cities even when they step up and agree to invest hundreds of millions in environmental protection. Cities are treated like criminals instead of partners. The draft legislation would bar EPA from extracting monetary penalties from cities for past violations if they agree to take action to address CWA mandates. This is a problem that is caused by a policy, not the law. If EPA changes its policy, then we can drop this provision from the draft legislation.

Ensuring Affordability

We greatly appreciate the efforts of this Subcommittee to improve the State Revolving Loan Fund (SRF) program to help make Clean Water Act mandates somewhat more affordable. In particular, we appreciate your recognition that expanding loan terms to 30 years will help cities keep annual costs lower. We can now take that provision out of our draft legislation.

We also appreciate the authorization of grants to municipalities that would experience a significant hardship raising the revenue to pay the debt service on loans uses to finance projects. Finally, we want to thank you for recognizing that significant hardship can be identified based on a wide variety of data, including income and unemployment data, and population trends. We particularly appreciate your recognition that a community faces significant hardship when part of the community is faced with an undue financial burden. As described below, the draft legislation takes a similar approach.

Like the authorization of grants within the SRF program, we suggest a federal cost-share. However, we cannot assume that there will be appropriations to support a federal cost share that would make sewer and stormwater projects more affordable. If funding is not provided, our legislation sets up a framework to ensure that these projects are affordable.

To make sure that projects are affordable, the legislation requires EPA to determine that water quality standards are attainable and that control measures are economically achievable and sustainable. To achieve these objectives, EPA can provide local governments with more time to implement projects. If that is not sufficient, EPA can work with states to change water quality standards so that meeting those standards will not impose a "substantial and widespread economic and social impact" on communities.

"Substantial and widespread economic and social impact" is the current standard in EPA's regulations for a "use attainability analysis" that justifies a change in water quality standards. So, this is a tool that is available under current law to help make wastewater infrastructure improvements more affordable for communities. However, EPA does little to support those analyses and, in fact, discourages Sates from using this tool. In addition, EPA regulations do not define what is considered "substantial" or "widespread."

Under the draft legislation, water quality standards or wastewater control measures are unaffordable if meeting them and other mandates would impose costs of more than 2% of actual household income on more than 20% of the households in the service area. Thus, "substantial" is defined as 2% of household income, and "widespread" is defined as 20% of the community.

This is similar to the approach that Congress adopted with your recent changes to title VI of the Clean Water Act, adopted as title V of WRRDA. These changes include language that identifies which communities would face a significant hardship meeting Clean Water Act mandates and therefore are eligible for grant assistance. This language endorses the use of the definition of "economically distressed" under the Public Works and Economic Development Act. Under that Act, a community is economically distressed when the community *or an area within a larger political boundary* has per capita income at 80% or less than national average, or unemployment 1% or more greater than national average, or actual or threatened severe unemployment or economic adjustment. The draft legislation similarly evaluates affordability based on differential impacts on low income households within a larger political boundary.

In addition, under the Public Works and Economic Development Act, the information on affordability that is provided by the community must be accepted by the Agency unless the Secretary determines it is inaccurate. The draft legislation does not include such a provision, but it would be welcome. Too often, EPA redoes a city's financial analysis using assumptions intended to make it look as if a city can spend more than is truly affordable.

Ensuring Flexibility

The draft legislation also includes additional areas of flexibility. For example, it would allow cities to meet water quality standards over time (longer than a permit term), using adaptive management approaches, if a city is meeting multiple mandates with an integrated plan. This provision allows cities to implement sewer control measure under their permits, rather than a consent decree or administrative order.

The legislation also would allow 10 year permits. It would allow EPA or a state to issue a permit for unavoidable sanitary sewer overflows. Finally, it would allow blending and peak flow treatment facilities as long as water quality standards are met. This last provision codifies a recent 8th Circuit opinion that EPA is refusing to apply nationwide.

Comparison to other legislation

We greatly appreciate the interest shown by members of Congress in the challenges facing local governments caused by the sewer systems that were designed early in the last century, and the impacts on the families that have to pay for improvements to those sewer systems. Accordingly, we are very happy to see that several pieces of legislation have been developed to address these issues. However, we are concerned that some of the other bills will not solve the problems identified by the Mayors Water Council.

A comparison of the Water Quality Improvement Act, the Clean Water Affordability Act (H.R. 3862) and the Clean Water Compliance and Ratepayer Affordability Act (H.R. 2707) is attached to this testimony.

In summary, we are looking for legislation that can benefit all cities and that does not leave relief for local governments subject to the discretion of the EPA. EPA discretion is what we have right now – and we are not seeing EPA use its discretion in ways that recognize that environmental improvements must be affordable.

V. Conclusion

As I stated when I appeared here two years ago, cities are stewards of the public trust, a responsibility that we share with the state and federal governments and should be accorded the respect of a shared stewardship of our environment.

We need Congress to provide relief. We need Congress to provide oversight and to remember that EPA has its authority because of the way the Clean Water Act was written and enacted by the Congress. We need Congress to act.

Thank you again for this opportunity to address you.

DISCUSSION DRAFT
August 2013

A Bill

To authorize approaches to and assistance for improving water quality.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Section 1. Short title.

This Act may be cited as the Water Quality Improvement Act of 2013.

SEC. 2 FINDINGS.

Congress finds the following:

(1) The capital costs that cities bear to address combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), treatment plant upgrades, and stormwater controls are unfunded federal mandates and are among the most costly burdens faced by local governments.

(2) Upon the passage of the 1972 Federal Water Pollution Control Act (Clean Water Act), Congress authorized and funded over $60 billion in grants that created partnerships between municipalities, states and the federal government to share the costs of upgrading publicly owned treatment works around the country to meet the Clean Water Act mandates relating to secondary treatment.

(3) In 1987, Congress determined that large capital grants for municipal wastewater treatment were no longer necessary, and phased out grants to local governments in lieu of a loan program to be managed by the states.

(4) Since 1987 many unanticipated and extremely costly new Clean Water Act and Safe Drinking Water Act mandates have been imposed on local governments and more are to be imposed on local governments in coming months and years, but federal grant money is no longer provided to help meet these mandates.

(5) Today municipalities expend over $111 billion every year to provide essential water services for the protection of public health and to clean the environment and meet state and federal water and wastewater mandates, an annual amount that is nearly double the total of all the grants that the federal government provided over nearly 20 years.

(6) The many mandates imposed by the Clean Water Act and the Safe Drinking Water Act have created cumulative financial burdens that cannot be borne by municipalities, their low and moderate income families, and their business enterprises, forcing municipalities to forego investment in competing municipal priorities.

(7) In explicit recognition of the burden of these costs the United States Environmental Protection Agency (U.S. EPA) has recently developed a policy allowing local governments to create Integrated Plans through which a local government can coordinate competing and sometimes conflicting actions, prioritize actions that will provide the greatest environmental and public health benefits for the funds expended, and evaluate progress and the need for further actions to meet water quality standards through adaptive management processes.

(8) Because U.S. EPA currently interprets the Clean Water Act to require immediate compliance with any pre-1977 water quality standards, it relies on aggressive enforcement tools such as consent decrees and orders as its principal method of interacting with municipalities, resulting in overly costly and overly prescriptive mandates that often yield negligible public benefits, and precluding opportunities for flexibility by preempting the use of permits and adaptive management processes to comply with Clean Water Act obligations.

(9) In tandem with these decrees and orders, U.S. EPA and the Department of Justice have adopted policies on penalties and fines that treat local governments as polluters, rather than as partners and stewards in improving our environment.

(10) Local governments that agree to implement plans to address water quality should not be subject to penalties or citizen suits under the Clean Water Act.

(11) Plans implemented by local governments to address water quality should be based on economically achievable and sustainable control

measures to meet attainable water quality standards.

SEC. 3. WATER POLLUTION CONTROL GRANTS.

Section 221 of the Federal Water Pollution Control Act (33 U.S.C. 1301) is amended—

(1) by striking subsections (a) through (g) and inserting the following:

"(a) Grants.—The Administrator may—

"(1) make grants to States for the purpose of providing grants to local or regional authorities or a municipality or municipal entity

(A) for use in planning, designing, and constructing treatment works

(I) to intercept, transport, control, or treat municipal combined sewer overflows and sanitary sewer overflows, or

(II) to meet with effluent limitations in a permit issued under section 402 of this Act that are not already being met by the treatment works on the date of enactment of this Act; or

(B) to reduce the discharge of pollutants from a municipal storm sewer;

(C) to retire debt incurred for the purposes identified in subparagraph (A) and (B) in any case in which that debt is imposing significant and widespread social and economic impacts on ratepayers, as determined under the criteria in section 402(r)(3)(B); and

"(2) make a grant directly to a local or regional authority or municipality or municipal entity for the purposes described in paragraph (1).

"(b) Prioritization.—In selecting from among municipalities applying for grants under this section, a State or the Administrator shall give priority to an applicant that is a financially distressed community, as determined by the applicable State under subsection (c).

"(c) Determination.—In determining whether a community is a distressed community for the purposes of subsection (b), a State shall consider, among other factors, the criteria described in section 8(b)(2)(A) of the Water Quality Improvement Act of 2013.

"(d) Cost-Sharing.—

"(1) FEDERAL SHARE.—The Federal share of the cost of any project or activity carried out using funds from a grant made under subsection (a) shall be not less than 75 percent.

"(2) NON-FEDERAL SHARE.—The non-Federal share of the cost of any project or activity carried out using funds from a grant made under subsection (a) may include—

"(A) in any amount, public and private funds and in-kind services; and

"(B) notwithstanding section 603, financial assistance, including loans, from a State water pollution control revolving fund.

"(e) Administrative Requirements.—

"(1) IN GENERAL.—Subject to paragraph (2), a project that receives grant assistance under subsection (a) shall be carried out subject to the same requirements as a project that receives assistance from a State water pollution control revolving fund established pursuant to title VI.

"(2) DETERMINATION OF GOVERNOR.—The requirement described in paragraph (1) shall not apply to a project that receives grant assistance under subsection (a) to the extent that the Governor of the State in which the project is located determines that a requirement described in title VI is inconsistent with the purposes of this section.

"(f) Allocation of Funds.—

"(1) FISCAL YEAR 2014.—For fiscal year 2014, subject to subsection (g), the Administrator shall use the amounts made available to carry out this section under subsection (i)(1) to provide grants to municipalities and municipal entities under subsection (a)(2) in accordance with the priority criteria described in subsection (b).

"(2) FISCAL YEAR 2015 AND THEREAFTER.—For fiscal year 2014 and each fiscal year thereafter, subject to subsection (g), the Administrator shall use the amounts appropriated to carry out this section under subsection (i)(1) to provide grants to States under subsection (a)(1) in accordance with a formula that—

"(A) shall be established by the Administrator, after providing notice and an opportunity for public comment; and

"(B) allocates to each State a proportional share of the amounts based on the total needs of the State as identified in the most recent survey—

"(i) conducted under section 210; and

"(ii) included in a report required under section 516(a).";

(2) by redesignating subsections (h) and (i) as subsections (g) and (h), respectively;

(3) in the first sentence of subsection (h) (as redesignated by paragraph (2)), by striking "2003" and inserting "2014"; and

(4) by adding at the end the following:

"(i) Funding.—

"(1) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

"(A) $3,000,000,000 for fiscal year 2014;

"(B) $3,000,000,000 for fiscal year 2015;

"(C) $3,000,000,000 for fiscal year 2016;

"(D) $3,000,000,000 for fiscal year 2017; and

"(E) $3,000,000,000 for fiscal year 2018.

"(2) AVAILABILITY OF AMOUNTS.—Amounts authorized to be appropriated under paragraph (1) shall remain available until expended.".

SEC. 4. INTEGRATED PLANNING PROCESS.

1. Integrated Planning Permits.

Section 402 of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended by adding at the end the following:

"(r) Implementing Integrated Plans Through Permits.--

(1) Permit flexibility.—Upon the request of the permittee, the Administrator or Director shall issue a permit for municipal discharges[1] that integrates multiple effluent standards and limitations under this Act. In such a permit-

[1] Add definition of "municipal discharges" as follows: "Municipal discharges means discharges from a treatment works as defined in section 212(2) and discharges from a municipal storm sewer under section 402(p). This term includes discharges of wastewater or storm water collected from multiple municipalities

(A) the water quality based effluent limitations shall be based on attainable water quality standards;

(B) the control measures shall be economically achievable and sustainable; and

(C) the authorized discharges need not immediately meet water quality based effluent limitations as long as the discharger continues to make reasonable progress towards meeting such limitations.

(2) Permit compliance.-- A discharge that is in compliance with a permit under this subsection are deemed to be in compliance with effluent standards and limitations under this Act.

(3) Attainable Water Quality Standards. – Attainable water quality standards under paragraph (1) are standards that the Administrator or Director has reviewed and found to be technically achievable and economically affordable.

(A) A determination of technical achievability shall consider[2]

(i) Naturally occurring pollutant concentrations;

(ii) Natural, ephemeral, intermittent or low flow conditions or water levels;

(iii) Human caused conditions or sources of pollution that cannot be remedied or would cause more environmental damage to correct than to leave in place;

(iv) Dams, diversions or other types of hydrologic modifications where it is not feasible to restore the water body to its original condition or to operate such modification in a way that would result in the attainment water quality standards; or

(v) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, that may preclude attainment of water quality standards.

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if such discharges are covered by the same permit issued under section 402 to the person operating the treatment works or municipal storm sewer."

[2] These are criteria for changing water quality standards under 40 C.F.R. 131.10(g).

(B) A determination of economic affordability shall consider whether meeting water quality standards would result in substantial and widespread social and economic impact.[3]

(i) the economic and social impact on a person in the service area of the permittee is substantial if the costs paid by such person to any entity for all federally mandated infrastructure improvements, operation and maintenance, and compliance measures, including costs incurred as a result of this Act, the Safe Drinking Water Act, the Solid Waste Disposal Act, and the National Flood Insurance Act, and similar mandates under state law, and the cost of servicing any debt incurred or to be incurred to finance such costs exceeds 2 percent of the person's household income.

(ii) an economic and social impact is widespread if twenty percent or more of persons in the service area of the permittee face the substantial impact described in clause (i).[4]

(C) In determining whether the economic and social impacts of existing and potential additional costs, including debt service, on persons living within the service area of the permittee are substantial and widespread, the Administrator also shall consider:

(i) impacts on low income households and the ability of such households to pay basic shelter costs;

(ii) whether or not there is a failing local industry or if a local industry might fail if higher taxes or fees are imposed on it;

(iii) the population trends in the service area of the permittee;

(iv) a municipality's capital improvement plan and whether a municipality would have to forgo projects in its plan in order to finance improvements to comply with existing water quality standards;

(v) the ability of a municipality to incur more debt, including its ability to issue and find a market for additional municipal bonds;

[3] This is a criterion for changing water quality standards under 40 CFR 131.10(g).

[4] EPA can use income data by Census block to make this determination.

(vi) whether the debt incurred to implement controls has or will result in a lowering of the municipality's bond rating;

(vii) whether the municipality has limited legal authority to pass increased costs through to ratepayers and increased for costs of water quality programs must be paid from their general fund; and

(vii) any other financial factor brought to the Administrator's attention by a municipality.

(D) A determination of economic affordability shall not be based on median household income and shall not establish a minimum level of expenditure by a municipality.

(E) A determination of economic affordability shall be based on the legally adopted rates in effect at the time that the determination is made.

(4) Economically achievable controls. -- Economically achievable controls under paragraph (1) means

(A) controls that will not result in substantial and widespread social and economic impacts as determined in accordance with paragraph (3)(B) or

(B) in any case in which a discharger is a municipality or other subdivision of a state organized for the purpose of providing services to the public, the annual cost to implement such controls, including debt service on bonds issued to fund such implementation, will not exceed fifty percent of the annual operating budget of the operating utility, unless

(i) the Administrator provides the discharger with a grant covering at least 75 percent of the total capital cost of the control measures, or

(ii) the permit allows at least 40 years for the implementation of controls, and, if requested by the discharger, the permit relies on green infrastructure.

(5) Sustainable controls.—The Administrator, or in the case of an authorized state program, the Director, shall determine whether control measures are sustainable under paragraph (1) by evaluating relevant environmental impacts associated with implementation of the controls over the life of such controls.

(6) Reasonable progress.—The Administrator, or in the case of an authorized state program, the Director, shall determine whether a discharger is making reasonable progress towards meeting attainable water quality standards by implementing economically affordable and sustainable control measures under paragraph (1) based on

(A) the availability and effectiveness of controls,

(B) the cost of controls and the impact of such costs on ratepayers, and

(C) all environmental impacts of the control measures.

(7) Permit Term – At the discretion of the Administrator, or in the case of an authorized state, the Director, a permit described in paragraph (1) may be issued for a term of greater than five years, but not more than ten years.

(8) Adaptive management for the attainment of water quality standards.—

At the time of renewal of a permit described in paragraph (1), the Administrator, or in the case of an authorized state, the Director, shall evaluate the effectiveness of the controls identified in the permit, including whether attainable water quality standards are being met or are expected to be met through the controls implemented during the permit term and shall evaluate whether the controls continue to be affordable and sustainable.

(A) If attainable water quality standards are not being met, the permit may

(i) be renewed to continue implementation of affordable and sustainable controls identified in the permit that are expected to result in the attainment of water quality standards in the future,

(ii) be renewed to replace the controls identified in the permit with alternative affordable and sustainable controls designed to meet attainable water quality standards based on information developed by the discharger, or,

(iii) if controls identified in the permit are fully implemented but water quality standards are not yet met, require the implementation of additional affordable and sustainable controls.

(B) If attainable water quality standards are being met, no additional controls on the discharge shall be required under this section.

(C) If the controls identified in the permit are no longer affordable and sustainable, the permit may be modified to replace the controls identified in the permit with alternative affordable and sustainable controls.

(s) Unavoidable Discharges.—

(1) Permits.- A permit under this section may authorize an unavoidable discharge from a sanitary sewer.

(2) Unavoidable discharges.—A discharge from a sanitary sewer overflow is unavoidable if it is --

(A) a discharge that is necessary to prevent loss of life, personal injury, or severe property damage; or

(B) a discharge that is a temporary, exceptional incident that could not be prevented by proper operation and maintenance of the system, such as exceptional acts of nature, wet weather conditions beyond the capacity of the system, and unforeseen sudden structural, mechanical, or electrical failure that is beyond the control of the operator.

(3) Controls on unavoidable discharges to protect water quality.-- A permit may require controls to prevent the violation of water quality standards from unavoidable discharges from sanitary sewers."

SEC. 5. MUNICIPAL STORMWATER CONTROLS.

Section 402(p)(3)(B)(iii) of the Federal Water Pollution Control Act (33 U.S.C. 1342) is amended to read as follows:

(iii) shall require achievable and affordable controls to reduce the discharge of pollutants to the maximum extent practicable, including management practices; control techniques; system, design and engineering methods; and other achievable and affordable controls on such discharges.

SEC. 6. INTEGRATED PERMIT PILOT PROJECTS

Title I of the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) is amended by adding at the end the following:

“Sec. 124. Integrated Permit Pilot Projects.

“(a) In General.-- Within 365 days of the date of enactment of this Act, each Regional Administrator shall issue, or shall work with authorized states to issue, at least one permit that addresses multiple regulatory requirements, as described in section 402(r).

(b) Permit elements.—A permit described in subsection (a) shall integrate at least two, or at the discretion of the permittee, or more, regulatory requirements, such as

(1) controls on combined sewer overflows,
(2) controls on sanitary sewer overflows,
(3) controls on municipal stormwater discharges,
(4) wastewater treatment,
(5) controls to meet allocations in a total maximum daily load.

(c) Prioritization and sequencing of controls.—

(1) Prioritization.-- A permit described in section 402(r) shall allow the permittee to identify priority controls that will achieve cost-effective water quality benefits and to implement and assess the effectiveness of such controls before requiring implementation of other regulatory controls.

(2) Controls identified in the permit.- If the permit provides for prioritization and sequencing of controls, any regulatory obligations that are planned to be addressed after the term of the permit shall be indentified generally in the permit fact sheet but shall not be mandatory elements of the permit.

(d) Report to Congress – Within two years from the date of enactment of this section, the Administrator shall submit a report to Congress regarding the implementation of integrated permits under section 402(r).

SEC 7. ENFORCEMENT.

1. Inapplicability of Administrative and Civil Penalties.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319 is amended—

(A) In subsection (d) --

(a) by striking "Any person" and inserting "(1) In General – Any person"; and

(b) by inserting at the end the following:

"(2) Compliance Plans.—Notwithstanding paragraph (1), no municipality shall be subject to a civil penalty for past violations of the sections of the Act referred to in paragraph (1) in any case in which the municipality adopts and is implementing a plan to come into compliance with such sections, pursuant to a permit under section 402, an administrative order under section subsection (a), or a civil action under subsection (b)."

(B) In subsection (g) by adding at the end the following –

"(12) Compliance Plans.-- Notwithstanding paragraph (1), no municipality shall be subject to an administrative penalty for past violations of the sections of the Act referred to in paragraph (1) in any case in which the municipality adopts and is implementing a plan to come into compliance with such sections, pursuant to a permit under section 402, an administrative order under section subsection (a), or a civil action under subsection (b)."

2. Implementation of Integrated Plans through Administrative Orders or Consent Decrees.

Section 309 of the Federal Water Pollution Control Act (33 U.S.C. 1319 is amended by adding at the end the following:

"(h) Implementation of Integrated Plans. –

(1) The Administrator shall have no authority to issue an order under subsection (a) or to commence a civil action under subsection (b) against a permittee for municipal discharges unless the Administrator has provided the permittee with the opportunity to come into compliance with this Act through an integrated plan that meets the requirements of a permit issued

under subsection (r) of section 402.

(2) At the request of any permittee for municipal discharges that is implementing one or more requirements of this Act under an administrative order or settlement agreement, the Administrator shall modify such administrative order or shall seek the leave of a court with continuing jurisdiction to modify such settlement agreement to allow the permittee to come into compliance with this Act through an integrated plan that meets the requirements of a permit issued under subsection (r) of section 402.

(3) At the request of any permittee for municipal discharges that is implementing an administrative order or settlement agreement that met the requirements of a permit issued under subsection (r) of section 402 when issued, but no longer meets such requirements, the Administrator shall modify such administrative order or shall seek the leave of a court with continuing jurisdiction to modify such settlement agreement to bring the agreement or order back into compliance with the such requirements.

SEC 8. DEFINITIONS

Section 502 of the Federal Water Pollution Control Act (33 U.S.C. 1362 is amended by adding at the end the following—

"(25) BYPASS.—The term "bypass" means an intentional diversion of a waste stream from any portion of a treatment system. Treatment of a waste stream in accordance with the design of the treatment system shall not constitute a "bypass" if the treatment system was approved or permitted by the Administrator, or in the case of an authorized state program, the Director, or if the discharge achieves technology and water quality based effluent limitations at the point of discharge.[5]

(26) MUNICIPAL DISCHARGES.—The term "municipal discharges means discharges from a treatment works as defined in section 212(2) or discharges from a municipal storm sewer under section 402(p). This term includes discharges of wastewater or storm water collected from multiple municipalities if such discharges are covered by the same permit issued under section 402."

[5] *See Iowa League of Cities v. EPA*, Case No. 11-3412 (8th Cir. Mar. 25, 2013), *pet. For rehearing en banc denied* July 10, 2013.

SEC. 9. WATER POLLUTION CONTROL REVOLVING LOAN FUNDS.

(a) Extended Repayment Period.—Section 603(d)(1) of the Federal Water Pollution Control Act (33 U.S.C. 1383(d)(1)) is amended—

(1) in subparagraph (A), by striking "20 years" and inserting "the lesser of 30 years or the design life of the project to be financed with the proceeds of the loan"; and

(2) in subparagraph (B), by striking "not later than 20 years after project completion" and inserting "upon the expiration of the term of the loan".

(b) Authorization of Appropriations.

Section 607 of the Federal Water Quality Control Act (33 U.S.C. 1387) is amended to read as follows:

Sec. 607. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out the purposes of this title the following sums:

$2,000,000,000 per fiscal year for each of fiscal year 2014, 2015, 2016, 2017, and 2018.

SEC. 10. UPDATING OF GUIDANCE.

(a) Definitions.—In this section:

(1) ADMINISTRATOR.—The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) AFFORDABILITY.—The term "affordability" means, with respect to payment of a utility bill, a measure of whether an individual customer or household can pay the bill without undue hardship or unreasonable sacrifice in the essential lifestyle or spending patterns of the individual

or household, as determined by the Administrator.

(3) FINANCIAL CAPABILITY.—The term "financial capability" means the financial capability of a community to make investments necessary to make water quality-related improvements, taking into consideration the criteria described in subsection (b)(2)(A).

(4) GUIDANCE.—The term "guidance" means the guidance published by the Administrator entitled "Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development" and dated February 1997, as applicable to combined sewer overflows and sanitary sewer overflows.

(b) Updating.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Administrator shall update the guidance to ensure that the evaluations by the Administrator of financial capability assessment and schedule development meet the criteria described in paragraph (2).

(2) CRITERIA.—The criteria described in this paragraph are that, under the updated guidance—

(A) in assessing financial capability of a community—

(i) greater emphasis should be placed on local economic conditions;

(ii) for regional systems, consideration should be given to the economic conditions of political jurisdictions and significant demographic groups within each region;

(iii) prescriptive formulas for use in calculating financial capability and thresholds for expenditure should not be considered to be the only indicator of the financial capability of a community;

(iv) site-specific local conditions should be taken into consideration in analyzing financial capability;

(v) a single measure of financial capability or affordability (such as median household income) should be viewed in the context of other economic measures, rather than as a threshold to be achieved; and

(vi)(I) consideration should be given to the economic outlook of a community, including the potential impact of program

requirements over time, in the development of implementation schedules; and

(II) the assessment should take into consideration other essential community investments relating to water quality improvements;

(B) with respect to the timing of implementation of water quality-related improvements—

(i) environmental improvement implementation schedules should be structured to mitigate the potential adverse impact on distressed populations resulting from the costs of the improvements; and

(ii) implementation schedules should reflect local community financial conditions and economic impacts;

(C) with respect to implementation of methodologies—

(i) a determination of local financial capability may be achieved through an evaluation of an array of factors the relative importance of which may vary across regions and localities; and

(ii) an appropriate methodology shall consider various factors as are appropriate to recognize the prevailing and projected economic concerns in a community; and

(D) the residential indicator should be revised to include—

(i) a consideration of costs imposed upon ratepayers for essential utilities;

(ii) increased consideration and quantification of local community-imposed costs in regional systems;

(iii) a mechanism to assess impacts on communities with disparate economic conditions throughout the entire service area of a utility;

(iv) a consideration of the industrial and population trends of a community;

(v) recognition that—

(I) the median household income of a service area reflects a numerical median rather than the distribution of incomes within the service area; and

(II) more representative methods of determining affordability, such as shelter costs, essential utility payments, and State and local tax efforts, should be considered;

(vi) a consideration of low-income ratepayer percentages; and

(vii) impacts relating to program delivery, such as water quality infrastructure market saturation and program management.

(3) IMPLEMENTATION.—The updated guidance should indicate that, in a case in which a previously approved long-term control plan or associated enforceable agreement allows for modification of the plan or terms of the agreement (including financial capability considerations), and all parties are in agreement that a change is needed or that the plan or agreement contains a reopener provision to address changes in the economic or financial status of the community since the effective date of the plan or agreement, reconsideration and modification of financial capability determinations and implementation schedules based on the criteria described in paragraph (2) are appropriate.

(c) Publication and Submission.—Upon completion of the updating of guidance under subsection (b), the Administrator shall publish in the Federal Register and submit to the Committee on Environment and Public Works of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives the updated guidance.

(d) Authorization of Appropriations.—There are authorized to be appropriated such sums as are necessary to carry out this section.

RESOLUTION TO REINSTATE A FEDERAL, STATE AND LOCAL GOVERNMENT PARTNERSHIP FOR ACHIEVABLE AND AFFORDABLE WATER QUALITY IMPROVEMENTS

WHEREAS, the capital costs that cities bear to address combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), treatment plant upgrades, and stormwater controls are unfunded federal mandates and are among the most costly burdens faced by local governments; and

WHEREAS, upon the passage of the Clean Water Act, Congress authorized and funded over $60 billion in grants that created partnerships between municipalities, states and the federal government to share the costs of upgrading publicly owned treatment works around the country to meet the Clean Water Act mandates relating to secondary treatment; and

WHEREAS, in 1987, Congress determined that large capital grants for municipal wastewater treatment were no longer necessary, and phased out grants to local governments in lieu of a loan program to be managed by the states; and

WHEREAS, since then many unanticipated and extremely costly new Clean Water Act and Safe Drinking Water Act mandates have been imposed on local governments and indeed more are to be imposed on local governments in coming months and years, but federal grant money is no longer provided to help meet these mandates; and

WHEREAS, today municipalities expend billions of dollars every year ($111.4 billion in 2010) to provide essential water services and meet state and federal water and wastewater mandates, an annual amount that is nearly double the total of all the grants that the federal government provided over nearly 20 years; and

WHEREAS, the many mandates imposed by the Clean Water Act and the Safe Drinking Water Act have created cumulative financial burdens that cannot be borne by municipalities, their low and moderate income families, and their business enterprises, forcing municipalities to forego investment in competing municipal priorities; and

WHEREAS, in explicit recognition of the burden of these costs USEPA has recently developed a policy allowing local governments to create Integrated Plans through which a local government can coordinate competing and sometimes conflicting actions, prioritize actions that will provide the greatest environmental benefits for the funds expended, and evaluate progress and the need for further actions to meet water quality standards through adaptive management processes; and

WHEREAS, because USEPA currently interprets the Clean Water Act to require immediate compliance with any pre-1977 water quality standards, it relies on aggressive enforcement tools such as consent decrees and orders as its principal method of interacting with municipalities, resulting in overly costly and overly prescriptive mandates that often yield negligible public benefits, and precluding opportunities for flexibility by preempting the use of permits and adaptive management processes to comply with Clean Water Act obligations, and

WHEREAS, in tandem with these decrees and orders, USEPA and DOJ have adopted policies on penalties and fines that treat local governments as polluters, rather than as partners and stewards in improving our environment,

NOW THEREFORE, BE IT RESOLVED, that The U.S. Conference of Mayors urges the United States Congress to determine that large capital grants to cities are necessary to meet mandates imposed under the Clean Water Act; to re-establish a joint environmental stewardship with cities; and, to assure that the costs of sustaining the infrastructure and operations of water and wastewater systems of cities do not unjustly burden low and moderate income households nor create burdensome costs for business enterprises; and

BE IT FURTHER RESOLVED, that The U.S. Conference of Mayors urges the United States Congress to authorize and appropriate sufficient funding for capital grants to cities facing mandates levied by the Clean Water Act, that these grants be prioritized for financially distressed cities and be for no less than 75 per cent of the costs of projects to be undertaken by cities, and that these grants may be used to retire debt to which cities have obligated themselves to comply with Clean Water Act, if those debts have imposed costs on customers that are beyond the affordability limits discussed below; and

BE IT FURTHER RESOLVED that The U.S. Conference of Mayors urges the United States Congress to enact amendments to the Clean Water Act to address concerns related to unfunded federal mandates, such as the following:

a) Without regard to the actual availability of federal grants or loans for addressing Clean Water Act and Safe Drinking Water Act mandates, increased flexibility must be allowed to municipalities seeking to comply with the mandates and that this be achieved through permits based upon integrated plans developed by municipalities to prioritize actions providing the greatest environmental benefits for the funds expended, and to allow municipalities to evaluate their progress and any need for further actions to meet water quality standards through adaptive management processes; and

b) Remove regulatory barriers to the use of adaptive management and permits to implement integrated plans by specifically determining that a municipality implementing an integrated plan will be in compliance with its permit as long as it is making reasonable progress towards achieving Clean Water Act goals; and

c) Authorize USEPA discretion to determine what constitutes “reasonable progress”, but do so within certain limits. Specifically, Congress should direct that a municipality will not be out of compliance with its permit for failing to make reasonable progress if:

* the applicable water quality standard is not achievable based on a use attainability analysis in accordance with current EPA regulations (where substantial impact is defined as 2% of a household income and a widespread impact is defined at 20% of the service area); and

* the control measures are not economically affordable because they would result in rates that exceed 2% of the household income of at least 20% of the families in a service area; and

* or the control measures are not economically affordable because the annual implementation costs, including debt service, will exceed half the annual operating budget of the municipal utility and the municipality does not receive a grant covering at least 75% of the costs or the permit does not allow at least 40 years for implementation of controls.

d) Provide the same flexibility for integrated plans implemented through consent decrees or administrative orders.

e) Authorize permits for unavoidable sanitary sewer discharges so that controls on such discharges may be included in an integrated permit (rather than a consent decree).

f) Allow regulators to issue permits with 10-year terms.

g) Require USEPA to issue or work with States and their Regions to issue at least one integrated permit in each of the 10 EPA Regions within one year and to report to Congress on the implementation of integrated permits within two years.

h) Prohibit USEPA from imposing civil or administrative penalties on a municipality for past violations if the municipality agrees to implement a plan to come into compliance with Clean Water Act obligations.

i) Define the term “by-pass” to clarify that a system that is designed and permitted to treat excess flows in peak flow treatment systems is not considered a by-pass to address the concern that some EPA regions are now claiming that permitted peak flow treatment systems are somehow an illegal by-pass of a treatment system.

j) Amend title 6 of the Clean Water Act to authorize repayment of SRF loans over 30 years instead of 20 years to make the annual costs of financing those loans more affordable for municipalities.

k) Require USEPA to update its affordability guidance to provide a more realistic and complete review of the all the financial burdens on municipalities and their ratepayers, including burden imposed by other federal laws and to justify flexible approaches to meeting all federal and state water-related mandates.

RESOLUTION ADOPTED JUNE 2013

Side by Side Comparisons of Clean Water Act Affordability Legislation

Issues Addressed:	Water Quality Improvement Act:	Clean Water Affordability Act (H.R. 3862):	Clean Water Compliance and Ratepayer Affordability Act (H.R. 2707):
Affordability of CWA Mandates In General	**Addresses through changes to the Act to require EPA to take affordability into account with respect to both schedule and level of control when cities are implementing integrated plans.** **<u>All cities can benefit.</u>**	**Addresses by requiring EPA to develop an integrating planning process that EPA may use (but is not required to use) and if used in conjunction with an updated affordability guidance, may (but is not required to) be used to extend compliance schedules.** **<u>Relief remains at EPA's discretion.</u>**	**References EPA's May 2012 Integrated Municipal Stormwater and Wastewater Framework and establishes an integrated plan pilot program to implement that framework.** **<u>Pilot program applies to only 15 cities</u>.**
Consideration of cost and environmental benefits.	**EPA must adjust both the schedule and the mandate if the cumulative impact of meeting multiple mandates would cause significant and widespread social and economic impacts.**	**EPA can continue to require cities to implement controls that are not cost effective and have little environmental benefit, but can allow implementation over 30 years to reduce cost impact.**	**In the context of an integrated plan pilot project, directs EPA to account for financial capability of the municipality, including operation and maintenance costs and other regulatory costs. Requires prioritization of obligations based on cost-effectiveness and environmental benefits.** **However, like H.R. 3862, obligations that are not cost effective and have little**

			environmental impact are merely delayed. EPA must allow a city to "innovative and flexible approaches" to meet CWA obligations.
Restoring Federal-Local Partnership through funding	**Authorizes $3 billion in grants in grants a year for 5 years to municipal entities for sewer over flow control grants, treatment plant upgrades, stormwater controls, and to retire related debt.** **Reauthorizes the Clean Water state revolving loan fund at $2 billion a year.** **Allows loan repayment over 30 years.**	**Sets aside 15% of state revolving loan funding for communities under 10,000 that are considered hardship communities. Sets aside between 20% and 30% of state revolving loan capitalization grant for additional subsidies (grants, loan forgiveness) for hardship communities.** **Allows loan repayment over 30 years.**	**Not addressed.**
Restoring Federal-Local Partnership by changing the enforcement mentality	**Bars EPA from extracting monetary penalties from cities for past violations if they agree to take action to address CWA mandates.**	**Not addressed.**	**Not addressed.**
Ensuring Affordability-Through Integrated Planning	**EPA must make integrated planning available to all cities that wish to use this tool.**	**EPA retains the discretion to allow or not allow the use of integrated planning.**	**Integrated planning is made available for only 15 communities.**

	Substantive relief provided through statutory changes that limit EPA's ability to impose unaffordable mandates on cities: **For municipal discharges addressed through integrated plans whether under a section 402 permit or order or decree, EPA must ensure that water quality standards are technically achievable and economically affordable and controls are economically achievable and sustainable.** **Defines in the statute what is achievable and affordable.** **– A water quality standard or a control plan is not affordable if it would impose costs of more than 2% of the household income of 20% or more of the service area.** **– EPA can make control plans affordable by providing funding or allowing more time for implementation.**	**Potential scheduling relief implemented through discretionary EPA program:** **EPA is directed to establish an integrated planning approach under which permit obligations may be implemented.** **For publicly owned treatment works and MS4s carrying out integrated plans, EPA may allow implementation in a section 402 permit under a schedule where most cost-effective and environmentally beneficial actions are completed first and least cost-effective and environmentally beneficial actions are completed later.** **The integrated permitting approach also must include mechanisms for changed circumstances (still only addresses schedule).**	**Directs EPA to select 15 municipalities to participate in an integrated planning pilot program, with priority given to municipality that is seeking to include adaptive management approaches.** **For municipalities in the pilot program, requires prioritization of obligations based on cost-effectiveness and environmental benefits.** **References adaptive management.** **Allows permit term of up to 25 years and corresponding changes to any implementation schedule. This should overturn EPA's position on availability of compliance schedules to pre-1977 standards for the pilot communities.**

	Permit term may be up to 10 years, but the bill allows cities to meet water quality standards over time (not immediately even if a pre-1977 standard), using adaptive management approaches, under an integrated plan. Thus, control measures can be carried out over multiple permit terms even if the permit includes pre-1977 standards. **EPA <u>must</u> give each community the opportunity to use integrated planning, including changing existing decrees or orders.** **Within one year, each EPA region <u>must</u> agree to at least one permit that, at the discretion of the permittee, integrates one or more, regulatory requirements, such as:** **(1) controls on combined sewer overflows,** **(2) controls on sanitary sewer**	**Permit term may be up to 25 years, but bill does not address the fact that pre-1977 water quality standards must be met immediately no matter how long the permit term is. Scheduling relief from pre-1977 standards can only be achieved through enforcement orders or decrees.**	

	overflows, (3) controls on municipal stormwater discharges, (4) wastewater treatment, (5) controls to meet allocations in a total maximum daily load.		
Updates to EPA's Affordability Guidance	**Essentially the same as H.R. 3862, except that in addition to the guidance, as noted above, substantive definitions of affordability are in the statute and are not left to EPA discretion. Requires modification of orders and decrees at the request of the municipality in the statute, not just in guidance.**	**Directs EPA to update its affordability guidance within one year. Update must include greater emphasis on local economic conditions, avoid prescriptive formulas or a single measure of affordability, look at affordability over time, allow schedules to be structured to mitigate adverse impact on distressed populations, allow implementation schedules up to 30 years, allow modification of existing schedules, must look at costs to ratepayers of all essential utilities, must consider more representative measures than median household income, must indicate that reconsideration and modification of schedules is appropriate based on**	**Guidance update is not addressed. Grants authority to modify consent decrees for the pilot communities. (EPA already has this authority.)**

		changed circumstances.	
Other Relief	**Allows permits to be issued to control unavoidable sanitary sewer overflows.** **Defines "by-pass" to allow blending and peak flow treatment facilities that meet secondary treatment and water quality standards, codifying an 8th Circuit opinion.** **Defines stormwater controls that control to the "maximum extent practicable" to include management practices; control techniques; system, design and engineering methods; and other achievable and affordable controls on such discharges.**	**Not addressed (so SSOs can only be addressed in enforcement orders or decrees)** **Not addressed (even though EPA has said it intends to follow the 8th Circuit case only in that circuit).** **Not addressed (even though an EPA draft guidance indicates EPA plans to require stormwater to meet numeric limits).**	**Same as H.R. 3862**