



ASSOCIATION OF CLEAN WATER ADMINISTRATORS

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***Testimony of Walter L. Baker, P.E.  
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***United States House of Representatives***

***Committee on Transportation and Infrastructure  
Subcommittee on Water Resources and Environment***

***Regarding***

***Clean Water Act Integrated Planning and Permitting***

Good morning, Chairman Mica, Ranking Member Rahall, and Members of the Subcommittee,

My name is Walt Baker. I am the Director of Utah's Department of Environmental Quality, Division of Water Quality, and the President of the Association of Clean Water Administrators (ACWA). I have over 27 years of experience in implementing Clean Water Act Programs.

The Association, 50 years old this year, is the national, nonpartisan voice of State and Interstate officials responsible for the implementation of water protection programs throughout the nation. Our members work closely with the U.S. Environmental Protection

Agency (EPA) as the co-regulators responsible for implementing the Clean Water Act (CWA). We offer technical and program support, increase state capacity, initiate dialogue, share information and resources, and ensure that states retain important flexibility to implement federal programs and initiatives in a way that makes good sense and yields the most beneficial environmental results possible. We are on the front lines of CWA monitoring, permitting, inspection, compliance, and enforcement across the country. In 46 states, we are the CWA National Pollutant Discharge Elimination System (NPDES) permitting authority. We are dedicated to Congress' goal of restoring and maintaining the chemical, biological, and physical integrity of our nation's waters.

I am pleased to present testimony on behalf of the Association today regarding EPA's recent effort to explore the concept of integrated planning and integrated permitting for municipalities and utilities.

The backbone of the country's infrastructure is aging. In the current economic climate, this infrastructure liability, coupled with addressing the demands of an increasing population and meeting other water quality challenges, such as nutrients, sanitary sewer overflows, combined sewer overflows and storm water, is taxing the ability of many of our municipalities and utilities to keep up. A thoughtful identification of approaches that promote cost-effective and synergistic solutions has never been more important. EPA, states, and local governments are all faced with mounting water quality problems and limited dollars. States face the same economic challenges as municipalities and utilities, and we fully understand the importance of prioritizing and maximizing the effectiveness of infrastructure dollars. We look for the same opportunities to leverage and extend funds when we disperse our limited Clean Water State Revolving Funds (CWSRF). Prioritizing is crucial. As the adage goes, if everything is a priority, nothing is a priority.

We appreciate EPA's October 27 memorandum, which focuses on the need for integrated planning in the area of storm and wastewater requirements, while still meeting CWA objectives. Since the Agency's release of the memorandum, the concept has broadened

in discussions to include integrated planning of other CWA investments and obligations, such as upgrades to meet total maximum daily loads (TMDLs) or to control nutrients. We believe that this expansion makes sense, as significant investments may be needed in some communities to address these water quality challenges. Under a Framework to-be-developed with co-regulator and stakeholder input, EPA will encourage municipalities to bring to their permitting authorities plans that outline effective ways to manage CWA water quality obligations. As we understand it, the plans must demonstrate how water quality goals will be achieved, but will allow consideration to be given to priorities, cost-effectiveness and innovation, and will provide increased flexibility. EPA's memorandum encourages incorporating green infrastructure into municipal solutions, which we also support.

While prioritization and innovation would be beneficial to alleviate some of the pressure on limited state and local resources, we must keep the ultimate end goal in mind – the improvement and protection of water quality. EPA has stated that integrated permitting will not entail a lowering of existing regulatory standards. We must ensure that this is in fact true and that public health and environment are not jeopardized in this new process. We must stay engaged in the process and ensure that all relevant stakeholders participate so that water quality does not suffer in a quest to prioritize responsibilities and to work towards new innovative solutions.

Moving from the appealing concepts in the memorandum, to a Framework, to actual implementation will require commitment by all parties. Integrated planning is one thing – the implementation of this planning through the CWA's rigorous permitting process may be quite another. The reality is, as the example below shows, elements of the CWA and its regulations may limit our ability to integrate multi-year obligations into an enforceable permit that ensures compliance with water quality standards. Without this, permits will be vulnerable to appeal, and instead of the integrated effort reducing our workloads – they will increase.

States have vast experience using reasonable compliance schedules in permits to allow a permittee to bring technology on-line to come into compliance with standards. Their use has been clarified a few times, including by the Environmental Appeals Board in the *Star-Kist Caribe* decision and in a follow-up May 2007 EPA memo on the subject. A compliance schedule can clearly be used to phase in integrated plan elements – and to provide a community with sufficient time to achieve compliance.

I would like to take a moment to point out a possible legislative fix to make implementation of EPA's integrated permitting process a bit more manageable. In July 2011, ACWA commented on the Presidential Memorandum, *Administrative Flexibility, Lower Costs, and Better Results for State, Local and Tribal Governments*. In our comments, we recommended the extension of the National Pollutant Discharge Elimination System (NPDES) permit cycle from five years to ten years, as a means to help achieve greater administrative flexibility for states. Because community plans oftentimes involve activities beyond five years, a 10-year permit term would make sense and support an integrated permitting approach. Let me be clear – this is not a necessary legislative amendment to bring integrated permitting to life. But it would be a helpful CWA amendment – even if it was limited to certain types of permittees by industrial code.

There are a few areas of integrated planning and permitting that we think merit attention in the coming months, as follows:

- 1) It is important to think about the effect of integrated planning on existing state consent decrees and orders. Re-opening existing consent decrees may be appropriate but this should be done on a case-by-case basis after deliberation by the parties involved so as to minimize the risk of third-party lawsuits or the delay of pending investments.
- 2) CWA programs that ignore the individual circumstances of states and municipalities can turn into a black hole that consumes precious time and resources and can

distract us from addressing the most pressing water quality problems. There are circumstances where a “one-size-fits-all” approach is warranted and there are circumstances where clearly it is not.

- 3) If integrated permitting is to be successful, EPA and other stakeholders will need to place renewed faith in permits as a key tool for municipal dischargers, as enforcement has been EPA’s main approach to addressing adverse water quality impacts from municipalities over the past decade. We recognize and are encouraged that EPA’s Offices of Water and of Enforcement and Compliance Assurance have jointly committed to an Integrated Planning process. Communication between these offices at both a headquarters and regional level has not always been what it could or should be. These distinct offices must improve their ability to work together and support states in integrated permitting.
- 4) As the discussions have evolved, EPA has referenced a “prioritization agreement,” which municipalities and utilities will enter into following analysis. At these early stages of discussion, it is difficult to know what these agreements will look like, and what effect they may have. For example – will they help protect a discharger from a third party suit, and how flexible are the agreement elements?
- 5) EPA has suggested it plans to work to identify communities in which to pilot these approaches. Early on, states must be directly involved with this identification process.

Let me conclude by again saying that state regulators are supportive of EPA’s development of a Framework for integrated planning and permitting. The Association has previously called on EPA to streamline, consolidate, and eliminate duplicative aspects of CWA programs. This Framework may be a step in the right direction for municipalities. However, as the permitting authorities, we must keep at the forefront of our minds the objectives set forth in the CWA: “to restore and maintain the chemical, physical, and

biological integrity of the nation's waters." It is our job, under the CWA and complimentary stand-alone state authorities, to protect water quality. Our charge must center on implementation. We look forward to working with EPA and other stakeholders on a Framework that allows us to promote reasonable, innovative, and cost-effective solutions with the greatest environmental impact.

Mr. Chairman, Members of the Subcommittee, I thank you for this opportunity to share our Association's thoughts on the development and implementation of EPA's integrated permitting initiative. I will be happy to answer any questions that you may have.

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