

Testimony of Carter H. Strickland, Jr.
Commissioner, New York City Department of Environmental Protection
before the
House Subcommittee on Water Resources and Environment
Committee on Transportation and Infrastructure

**Integrated Planning and Permitting, Part 2: An Opportunity for EPA to Provide
Communities with the Flexibility to Make Smart investments in Water Quality**

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Good morning, Chairman Gibbs, Ranking Member Bishop and Members of the Subcommittee. I am Carter Strickland, Commissioner of the New York City Department of Environmental Protection, or as we're known in New York City, "DEP." On behalf of Mayor Michael R. Bloomberg, thank you for the opportunity to testify on the U.S. Environmental Protection Agency's (EPA's) final integrated planning framework.

I had the pleasure of providing testimony before this subcommittee on this subject in December 2011. DEP also participated in workshops on EPA's Draft Framework on Integrated Planning and submitted written comments on February 29, 2012. We have reviewed the final framework issued in June and welcome this chance to offer additional testimony.

As EPA has noted, the final framework is not substantially different from the draft framework. DEP appreciates several points of clarification with respect to the role of States in integrated planning, as well as the encouragement of adaptive management and innovative approaches in addressing water quality. For example, water quality data for New York Harbor support the conclusion that combined sewer overflows (CSOs) are the dominant water quality issue, and that stormwater runoff is a lesser issue. While CSOs contribute slightly over 50% of total flow as compared to stormwater discharges and direct drainage (overland runoff), CSOs are estimated to contribute approximately 97% of total pathogen loading citywide. Accordingly, DEP has prioritized CSO abatement efforts. To that end, DEP has launched a \$2.4 billion green infrastructure program, and our recently renegotiated CSO consent order with the New York State Department of Environmental Conservation (NYSDEC) allows for elements of flexibility and adaptive management consistent with the principles embodied in the integrated planning framework. DEP is obligated under both Orders and SPDES Permits to undertake a variety of measures with respect to CSOs such as the development of Long Term Control Plans and the cleaning of our 136 miles of interceptors, which we just completed after a two year effort. Clearly, for the framework to succeed it needs to recognize and, where appropriate, defer to state authorities, which are often the primary regulators.

We also appreciate the framework's explicit reference to and encouragement of the use of "Planning for Sustainability: A Handbook for Water and Wastewater Utilities" (Feb. 2012) in the integrated planning process, and presumably the earlier companion

documents, “Clean Water and Safe Drinking Water Infrastructure Sustainability Policy” (Sept. 2010) and “Attributes of Effectively Managed Utilities” (2009). These documents provide suggestions for programmatic areas and approaches that also match community goals, while appropriately recognizing that the details of those programs cannot be known in advance or dictated from any central authority, but rather must be developed by the operating entity. DEP supports a planning approach that would help municipalities prioritize infrastructure investments in order to maximize water quality benefits and encourage the use of innovative and sustainable approaches such as green infrastructure. The final framework includes additional language about increasing public involvement, and DEP values the role of community stakeholders in the planning framework.

A number of our comments and recommendations on the draft framework have been addressed and are consistent with the final framework, but since the level of detail in the framework has not changed dramatically, our initial questions regarding the specifics of how integrated planning would be implemented remain unanswered.

First, our written comments on the draft framework included potential legal risks. EPA stated that this approach will not be used to expand the reach of enforcement but that communities wishing to engage in integrated planning should self-report any challenges to EPA in advance. DEP suggested that this condition might limit municipalities’ interest in participating for fear of new enforcement by EPA or State regulators, or by citizen suits. DEP also sought clarification as to whether citizen suits would be barred so long as a utility is in compliance with a duly approved integrated plan. The final framework does not provide clarification with respect to these potential legal risks.

Second, the final framework for the integrated plan includes a discussion on financial capability and refers to the 1997 EPA document on CSO Guidance for Financial Capability Assessment and Schedule Development. However, DEP has conducted our own affordability assessment, and we have come to realize that the criteria outlined in this guidance document does not provide the complete story with respect to affordability concerns of both the agency and our rate payers.

For example, we found that the use of median household income (MHI) as an affordability indicator has several limitations for a city like New York, where household incomes are not distributed around the median and approximately 20 percent of the population is living below the federal poverty level. Furthermore, the New York City Center for Economic Opportunity has noted some of the deficiencies with current measures of poverty and developed an alternative poverty threshold measure based on methodology from the National Academy of Sciences (NAS). Based on this new threshold, a higher percentage of NYC residents are living in poverty than the federal poverty rate portrays. Our affordability study estimates twenty-five percent of NYC households (755,385 households) have wastewater and sewer costs that are two percent or more of their household income. With projected future rate increases, the burden on this vulnerable population will increase.

Therefore, our study recommends that residential affordability should consider income distribution, poverty, unemployment, and other economic burdens (e.g., the high cost of living in New York City), all of which inform the environmental justice issues that the federal government is rightly concerned about. And affordability must consider the cumulative impact of long-term debt, which means that utilities have rising debt service that will cause rates to increase for the foreseeable future. For example, this year DEP will spend 42% of our budget on \$1.6 billion in debt service. Each community is unique, so the framework should provide an opportunity to bring all relevant financial indicators and information to the table when considering affordability; and regulators must have a framework to receive and assess such information. We believe that the federal government has a special obligation to ease the burdens on municipalities, since municipal bonds and debt service have essentially replaced the federal grants that accompanied the enactment of the federal obligations in the Clean Water Act.

Third, EPA has clarified that the integrated planning framework scope is limited to wastewater and stormwater obligations and not drinking water, except in the case of source water protection. While we understand the rationale of separating Safe Drinking Water Act and Clean Water Act obligations, the reality for DEP and other utilities that provide both drinking water and wastewater services is that spending in one area affects the amount of funds available in the other. Mandates should consider all water obligations facing each community. For example, DEP has spent more than \$10 billion in drinking water programs in the last decade, much of it mandated. These investments affect our overall debt, annual debt service, and therefore the rates that our customers pay. On what basis can these investments be discounted? I note that EPA has committed to review its requirements for covering drinking water reservoirs under the Long Term 2 Enhanced Surface Water Treatment Rule (LT2 rule), and has already deferred the implementation of the LT2 rule in New York City, which would require a \$1.6 billion concrete cover over a 90-acre reservoir – a project that our evidence shows would produce no public health benefit. The framework should build on these developments by considering past spending on Safe Drinking Water Act obligations, since we will be paying the debt service on those bonds for decades to come.

Fourth, the framework seeks to balance various mandates without recognizing the value of investments in non-mandated infrastructure. For example, on the wastewater side alone DEP has spent over \$9 billion in the past 10 years on programs, and has a multi-billion dollar future program to comply with mandates for CSOs and treatment plant upgrades, to launch programs to address stormwater discharges and nutrient loadings, and to plan for potential new requirements on total residual chlorine and other elements of the waste stream. Yet New Yorkers want and deserve non-mandated but still critical investments in programs to build storm sewers, replace storm and sanitary lines, and replace or maintain equipment according to prudent asset management review. There are still thousands of New Yorkers who lack sanitary sewers and tens of thousands more who lack storm sewers. Completing the full build-out of the storm and sanitary sewer system is an important priority for the City, but we have had to defer many of these projects until mandated work on treatment facilities is complete.

Fifth, the EPA's and Department of Justice's (DOJ's) enforcement actions must be consistent with the framework, and especially its consideration of state orders and permits as well as the general principle that the details of programs will be left to the operating agencies. Unfortunately, over the past few years the EPA and DOJ have been bypassing the permit process and "regulating by consent order" with provisions that have a stifling level of detail. The federal government is not in the business of operating utilities – not yet, anyway – and municipalities must have flexibility and discretion to make operational decisions within wide parameters.

In closing, we see integrated planning as a way for EPA, state regulators, and municipalities to sit down and prioritize these various water quality efforts so that there will be less "top-down decision making" and more collaboration and consensus among government agencies. This would vest discretion in local governments to invest scarce dollars in projects that meet critical needs and achieve the greatest public health benefits. The EPA's framework is a good start but it is far from sufficient to realize this vision.

Thank you for the opportunity to testify.