

Integrated Municipal Stormwater and Wastewater Planning

Frequently Asked Questions

July 15, 2013

Enforcement

- 1. For a municipality that already has an existing federal consent decree, can the remedy and its affordability be reexamined, under the Integrated Planning Approach?**

Yes. The EPA is always willing to work with all parties to a federal consent decree to consider requests to modify the terms based on new and relevant information that can improve the remedies. Those who wish to propose amendments to existing consent decrees to incorporate a more integrated approach should provide the EPA with sufficient information and analysis to determine whether an Integrated Planning Approach makes sense based on sound science and appropriate technical and financial analyses. The recently released “Integrated Planning Framework” spells out what elements would be needed for implementation of these approaches.

- 2. How will the Integrated Planning Framework affect ongoing consent decree negotiations?**

The EPA views ongoing consent decree negotiations as opportunities to work with municipal permittees that want to take a more integrated approach to their Clean Water Act (CWA) obligations and challenges. Any Integrated Planning Approach must ensure compliance with the CWA. The principles and elements of the Integrated Planning Framework will serve as a guide for negotiating consent decrees to address multiple CWA obligations with the underlying goal of ensuring that the projects with the greatest environmental and human health outcomes are completed first.

- 3. Why is the EPA continuing to list CSOs and SSOs as an enforcement priority if it recognizes that many communities are experiencing financial and budgetary constraints and often cannot afford to do the work required of them?**

The EPA's mission is to protect human health and the environment. When CSOs and SSOs occur, raw sewage can be discharged into local waters and into people's basements. Raw sewage contains pathogens that threaten public health, and can lead to beach closures or public advisories against fishing and swimming. Every three years, the EPA sets national enforcement priorities to focus enforcement resources and expertise on serious pollution problems affecting communities. The EPA will continue to work with communities to address those threats within the constraints of the communities' financial capability.

4. Is this Integrated Planning Approach laying the foundation for the EPA to expand its enforcement program and the reach of its enforcement actions?

No. Adopting an Integrated Planning Approach to CWA obligations is voluntary. This effort is a collaborative one between EPA, NPDES permit authorities and EPA and State enforcement officials. The intent is to use the flexibilities in both permits and enforcement to work with communities towards common goals.

5. Can the EPA emphasize the permitting process to make progress, rather than using enforcement?

The EPA believes that all tools available under the CWA should be part of the solution. Part of the Integrated Planning Framework is an enhanced focus on finding ways to use permits and enforcement in complementary ways to help move communities towards meeting CWA obligations. As the EPA implements the Framework, the Agency hopes and expects to explore the ways that permits can legally and effectively be used to reach those CWA goals.

Permitting

1. Will the EPA consider issuing one permit that addresses a community's MS4 and POTW requirements? How will it work?

The Agency is open to considering different permitting options to implement Integrated Plans, including issuing one permit that addresses MS4 and POTW requirements where the permittee has responsibility for both. The issuance of multiple permits can also be coordinated in such a way as to be consistent with the goals and expectations of a municipality's Integrated Plan.

2. Under what circumstances can compliance schedules be included in permits?

Compliance schedules in NPDES permits must be consistent with the requirements in 40 CFR section 122.47. The use of compliance schedules in NPDES permits for implementing water quality-based effluent limitations (WQBELs) will depend on the relevant State water quality standards. Under the CWA, a permit may contain a compliance schedule for WQBELs based on post July 1, 1977 State water quality standards provided the schedule achieves compliance "as soon as possible" and the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow such schedules. Many states that have such provisions in place also limit the length of compliance schedules that may be included in permits. If a schedule of compliance is deemed "appropriate" under 122.47 and its term exceeds one year, the permitting authority must include interim requirements and the dates for their achievement. 40 CFR section 122.47(a)(3). Where a compliance schedule exceeds the 5 year term of the permit, the permit must include final effluent limitations in order to ensure enforceability of the compliance schedule consistent with CWA Section 502(17) and 40 CFR 122.2. The framework for addressing compliance schedules in permits is explained *In the Matter of Star-Kist Caribe, Inc.* 3 E.A.D 171, 175, 177 (1990). Further

guidance on issuance of compliance schedules can be found in the EPA's May 10, 2007 memorandum entitled "Compliance Schedules for Water Quality-Based Effluent Limitations in NPDES Permits." (The memorandum is available at <http://water.epa.gov/lawsregs/guidance/wetlands/upload/signed-hanlon-memo.pdf>).

3. Why not utilize permits instead of enforcement for compliance schedules?

The circumstances facing each community are different. Under some circumstances, compliance schedules in permits may be appropriate. In other circumstances, enforcement, which provides greater flexibility for establishing compliance schedules, will be appropriate. In some situations, a combination of approaches might work. Compliance schedules in NPDES permits must be consistent with the requirements in 40 CFR section 122.47, as discussed above.

Where the municipality is not in compliance with the CWA, the NPDES authority and EPA have discretion to bring an enforcement action. Where there have been long standing violations without significant progress, enforcement will continue to be a valuable tool. Enforcement can provide a long term schedule that provides certainty that many communities are seeking and flexibility to allow longer term compliance schedules.

The aim of the EPA is to find a solution that protects human health and the environment, and tackles the most important problems first in a way that makes sense and is affordable. The framework the Agency has adopted encourages those flexibilities, and especially lower cost approaches that are also effective, such as green infrastructure solutions. The Agency has found answers that work for communities in recent agreements, and it will continue to work to achieve that goal.

4. The framework says an Integrated Plan "can be incorporated, where appropriate, into NPDES permits, enforcement actions, or both." How is it determined what is appropriate?

Permits play a central role in implementing NPDES requirements. NPDES permits should clearly state the requirements necessary for the permittee to comply with the CWA. As discussed in more detail in the answer to question 2 of this section, where appropriate, an NPDES permit authority may include a compliance schedule in a permit for WQBELs based on post July 1, 1977 State water quality standards provided the compliance schedule is "as soon as possible" and the State has clearly indicated in its water quality standards or implementing regulations that it intends to allow them. Factors that may be considered include the nature of the modifications, operations or measures necessary to reach compliance, the time frame needed to complete the work, the length of time the discharger has already had to meet WQBEL(s) under past permits and the length and severity of any past non-compliance, the level of good faith displayed by the permittee in pursuing compliance, and other case-specific circumstances. If a permit contains multiple compliance schedules, the compliance schedules should prioritize the most significant human health and environmental needs first.

Financial Capability

1. When a community is preparing a Financial Capability Assessment, can it include both the municipal wastewater and stormwater costs?

Yes. It is entirely appropriate for communities to consider the financial impacts of investments they need to manage both stormwater and wastewater discharges. The assessment of the community's financial capability may take into consideration current sewer rates, stormwater fees and other revenue, planned rate or fee increases, and the costs, schedules, anticipated financial impacts to the community of other planned stormwater or wastewater expenditures and other relevant factors impacting the utility's rate base. The EPA encourages municipalities to use the 1997 "CSO Guidance for Financial Capability Assessment and Schedule Development" (EPA 832-B-97-004) ("Guidance for Financial Capability Assessment") as a guide.

2. Can drinking water needs and costs be considered under the Integrated Planning Framework?

While costs for drinking water treatment and distribution would not be used to estimate metrics such as the residential indicator identified in the EPA's Financial Capability Assessment guidance, the financial burden associated with projects not required by the CWA may be considered when evaluating the overall financial health of a community. In this context, all financial burdens faced by the community (including costs associated with environmental projects other than those required by the CWA) may be relevant to schedule development under a municipality's Integrated Plan. EPA is open to considering a Drinking Water Investment Plan to complement the CWA Integrated Plan.

3. Will the EPA consider environmental compliance costs across media (water, air, and land issues) collectively in an Integrated Plan?

While costs for complying with air and land requirements would not be used to estimate metrics such as the residential indicator identified in the EPA's Financial Capability Assessment guidance, the financial burden associated with projects not required by the CWA may be considered when evaluating the overall financial health of a community. In this context, all financial burdens faced by the community (including costs associated with environmental projects other than those required by the CWA) may be relevant to schedule development under a municipality's Integrated Plan.

4. When evaluating costs of implementing an Integrated Plan, how will the financial capability of utilities and the communities they serve be determined?

A community's financial capability and other relevant factors are important when developing appropriate compliance schedules that ensure human health and environmental protection. As the EPA and states implement the June 5, 2012, Integrated Municipal Stormwater and Wastewater Planning Approach Framework, EPA's Guidance for Financial Capability Assessment will continue to be a valuable guide for evaluating the level of burden placed on a community by necessary clean water investments. The

guidance identifies a number of financial capability indicators that are considered in developing compliance schedules and it encourages permittees to submit any additional documentation that would create a more accurate and complete picture of their financial capability. This approach allows for the consideration of current local economic conditions when compliance schedules are being developed. As articulated in the January 18, 2013 memorandum “Assessing Financial Capability for Municipal Clean Water Act Requirements,” the EPA continues to work closely with local governments to clarify how the financial capability of community will be considered when developing schedules for municipal projects necessary to meet CWA objectives.

5. Are all communities required to spend 2% of the median household income (MHI) of the community to participate in the Integrated Planning process?

No. The EPA’s Guidance for Financial Capability Assessment suggests using the percentage of MHI as one indicator for helping to determine the schedule for completing necessary work. The MHI indicator is one of many considerations that EPA and NPDES States evaluate in determining the most appropriate schedule. The EPA expects that a full range of financial indicators and municipal-specific information will be considered when developing compliance schedules for inclusion into a permit or enforcement order. The MHI calculation is guidance, and is considered along with a suite of other financial indicators to assess the overall burden on a community. The guidance recommends that communities with higher burdens be given longer time periods to complete needed work. Municipalities are encouraged to provide additional financial information if they feel the EPA guidance is not adequately considering their unique financial considerations.

6. Will the EPA assist in funding the development of Integrated Plans, especially for smaller or less advantaged communities which may have trouble paying for the planning?

In general, grant funds for preparing an Integrated Plan are not available. However, a Clean Water State Revolving Fund can provide financial assistance to planning projects that have a reasonable prospect of resulting in eligible capital projects. (For additional information, see http://water.epa.gov/grants_funding/ewsrif/ewsrif_index.cfm). This eligibility could extend to integrated wet weather pilot projects. While it can be difficult for some communities to dedicate funds to planning, the EPA believes that some of the greatest opportunities to reduce overall costs come from up-front spending on planning activities.

7. Can a municipality include the ongoing cost for infrastructure rehabilitation and improvements in an Integrated Planning Approach?

Yes. However, where the cost of this work is included in the approach and impacts the pace of achieving compliance, communities may need to make commitments to demonstrate that the infrastructure improvements are taking place. The EPA also expects municipalities to conduct the routine maintenance necessary to avoid having the performance of the infrastructure deteriorate.

8. Stormwater utilities have worked very well where implemented. How can this impact the integration?

Stormwater management has historically been supported by a range of funding methods and mechanisms, including utilities (see “Guidance for Municipal Stormwater Funding,” 2006, National Association of Flood and Stormwater Management Agencies). EPA strongly supports utilities, as they can provide dedicated sources of funding for stormwater programs.

9. Does the EPA consider life cycle costs of compliance solutions or only construction costs?

The EPA supports the use of life cycle costs in evaluating alternatives as part of an Integrated Plan. Life cycle costs are the net present value of all costs for a project over its lifetime, including primary project costs, secondary financing costs, operations and maintenance and the cost of rehabilitation, repair and replacement. One of the principles to guide the development of an Integrated Plan that is identified in EPA’s 2012 Integrated Planning Framework document is to evaluate and incorporate, where appropriate, effective sustainable technologies, approaches and practices in Integrated Plans where they provide more sustainable solutions for municipal wet weather control. In February, 2012, the EPA released “Planning for Sustainability: A Handbook for Water and Wastewater Utilities.”¹ The Handbook describes a number of steps utilities can take to build sustainability considerations into their existing planning processes and make the best infrastructure choices that protect water quality and ensure the long-term sustainability of infrastructure assets. The Handbook recommends that, when evaluating alternatives for wastewater controls, municipalities assess the full life cycle costs of each alternative to provide a full accounting of the project’s annualized cost and revenue impacts.

General

1. Will the Integrated Planning Approach lessen regulatory standards or provide regulatory relief?

The Integrated Planning Approach will not change or lessen existing statutory or regulatory standards. Rather, the approach will take advantage of the flexibilities in existing EPA regulations, policies and guidance to allow municipalities to sequence implementation of their CWA obligations to protect water quality and public health. Municipalities developing integrated wastewater and stormwater plans should provide appropriate opportunities that allow for meaningful input from relevant community stakeholders during the identification, evaluation, and selection of alternatives and other appropriate aspects of plan development. For municipalities with an existing consent decree, the EPA is always willing to consider a request to modify existing plans to incorporate cost-effective innovative approaches that

¹ The February 2012 Handbook is available at <http://water.epa.gov/infrastructure/sustain/upload/EPA-s-Planning-for-Sustainability-Handbook.pdf>.

achieve comparable and measurable results as evidenced by recent modifications to agreements with Indianapolis, IN (see <http://www.epa.gov/compliance/resources/cases/civil/cwa/cityofindy-0610.html>) and Toledo, OH (see <http://www.epa.gov/compliance/resources/cases/civil/cwa/toledo.html>).

2. What is the role of Green Infrastructure and other innovative solutions?

The EPA embraces green infrastructure and other innovative solutions to address wet weather water quality problems and is working to promote these types of solutions to manage wet-weather related events in an efficient and cost-effective way which can also help revitalize urban areas. Green infrastructure provides multiple benefits in meeting CWA obligations, while also providing other benefits to enhance the livability of communities. As communities seek more integrated approaches to CWA obligations, EPA expects that green infrastructure approaches will commonly be considered and employed resulting in more sustainable communities and the creation of green jobs.

3. Who determines what the most pressing water quality needs of a community are?

Under the Integrated Planning process, municipalities would have an opportunity to develop an Integrated Plan that identifies the municipality's priorities and provides support for their recommendations. The Plan should describe the water quality and human health issues the community faces, along with other information, including a detailed description of alternatives considered and the criteria used for evaluating them. The Plan can then be considered in permitting and enforcement discussions (see below).

4. Are Integrated Plans legally binding?

An Integrated Plan developed by a municipality, by itself, will not establish legally binding requirements. The EPA anticipates that Integrated Plans should provide all the pertinent information, including the appropriate analyses necessary to develop appropriate schedules for implementing measures and actions necessary to comply with CWA requirements. Once a municipality has developed a Plan, the EPA or State NPDES authority will work with the municipality to develop any appropriate enforceable requirements and compliance schedules in permits and/or enforcement orders.

5. How does a municipality “qualify” for Integrated Planning?

There are no set qualifications to be met to take advantage of the Integrated Planning process. The Integrated Planning Approach is optional and the responsibility to develop an Integrated Plan rests with municipalities. Municipalities developing Integrated Plans should provide relevant community stakeholders with appropriate opportunities that allow for meaningful input during plan input. EPA encourages early coordination between municipalities developing a Plan, NPDES States and EPA on key implementation issues. Once a municipality has developed a plan, the NPDES permit and/or enforcement authority will work with the municipality as necessary to develop the

appropriate means for applying applicable legal requirements and implementation schedules.

6. Will all communities be required to use this Integrated Planning Approach?

No. This is not a mandatory approach. The intent is to promote the Integrated Planning Approach as a cost-effective and innovative way for communities to achieve water quality objectives.

7. Will the agency be selecting pilot communities to use the framework?

The Agency and relevant NPDES state authorities will work with any municipality that comes forward with an Integrated Plan. The Agency will work to highlight key aspects of well thought out Integrated Plans so that others may benefit from those successes.

8. How can communities proactively ensure that the plan they develop will be acceptable to regulators?

The EPA recognizes the importance of and encourages early coordination with and between NPDES States and the EPA on issues that may arise in individual Integrated Plans. This will reduce the need for plans to be revised in order for them to be implemented. The Integrated Planning Framework document encourages State NPDES permit authorities to initiate discussions with the EPA on their efforts to address Integrated Plans, especially for the first Integrated Plans developed in the State, as well as when: 1) the Plan raises issues associated with ongoing federal enforcement actions; or 2) the State is considering incorporating a novel approach into a permit. The EPA and States will work with communities to determine the appropriate roles of permit and enforcement authorities in addressing the regulatory requirements identified in the plan.

9. What is the EPA doing to ensure that Integrated Planning is approached consistently by each of its offices?

The EPA has worked extensively with its Regional Offices in developing the framework. The Regional Offices participated in the public workshops that were used to gain input on the draft framework. EPA Headquarters is in regular communication with the Regions and all parts of the Agency are committed to ensuring that the Integrated Planning Approach is appropriately implemented in a way that acknowledges the varying nature of site specific approaches.

10. Will the EPA be coordinating with state agencies when a municipality expresses interest in using an Integrated Planning Approach?

Yes. The EPA recognizes the importance of and encourages early coordination between NPDES States and the EPA on issues that may arise in individual Integrated Plans. The EPA encourages municipalities seeking to have Integrated Plans implemented through

permit provisions to contact their NPDES authority early in the process of developing a Plan. Where the EPA is the NPDES permitting authority, it will notify the State and coordinate on appropriate activities, such as TMDL development (see response to question 16 of this section below).

For municipalities where Integrated Plans are in the context of Federal enforcement, the EPA will coordinate with the State to the degree appropriate to implement the approach.

11. Can street sweeping and pollution prevention programs be included as elements of Integrated Plans?

Yes. Street sweeping and pollution prevention programs typically are required under MS4 and CSO permits. When a permittee identifies such controls as an element of an Integrated Plan, the permittee should provide projected pollutant reductions along with projected benefits to receiving waters and other environmental and public health benefits associated with the alternative.

12. Can non-NPDES efforts such as preserving buffer areas be considered under the Integrated Planning Approach?

Yes. Integrated Plans may address nonpoint source controls that protect surface water supplies, such as preserving buffer areas, through proposed water quality trading approaches or other mechanisms.

13. What assurance can you provide that the EPA will allow communities to use green infrastructure solutions in addressing their CSOs?

The EPA is committed to promoting green infrastructure approaches wherever they are appropriate. The recent permit and agreements with the communities listed below are good examples of the EPA's engagement and support in seeking green infrastructure solutions.

- Milwaukee Metro Sewerage District (the permit is available at http://www.mmsd.com/AssetsClient/documents/MMSD_Permit_Final_1_8_2013.pdf);
- Cleveland (the consent decree is available at <http://www.epa.gov/compliance/resources/cases/civil/cwa/neorsd.html>);
- Kansas City (the consent decree is available at <http://www.epa.gov/compliance/resources/cases/civil/cwa/kansascity.html>);
- St. Louis (the consent decree is available at http://www.epa.gov/region07/enforcement_compliance/MSD_consent_decree_cwa.htm);
- Cincinnati/Hamilton County (the consent decree is available at <http://www.epa.gov/compliance/resources/decrees/civil/cwa/hamilton-cd2.pdf>); and

- Louisville (the consent decree is available at <http://www.epa.gov/compliance/resources/cases/civil/cwa/louisville.html>).
- Chattanooga (the consent decree is available at <http://www.epa.gov/enforcement/water/cases/cityofchattanooga.html>)

14. Can an Integrated Plan address multiple water quality problems?

Yes. The Integrated Planning process is a comprehensive planning process that seeks to address all of a community's CWA related obligations while prioritizing those with the greatest human health and environmental consequences. An assessment of existing water quality challenges in an Integrated Plan may identify multiple pollutants (e.g., pathogens, nutrients, suspended solids) that impair water quality and multiple sources for these pollutants (e.g. wastewater or stormwater). In such cases, an Integrated Plan should include a description of the proposed relative priorities of the projects selected, including a description of how the proposed priorities reflect the relative importance of adverse impacts on public health and water quality.

In a situation where a community's Integrated Plan addresses water quality impairments caused by pollutants from multiple permitted community wastewater and/or stormwater discharges, the EPA believes it is appropriate for the permitting authority to consider, among other factors, the implementation priority assigned by the community to the various remedial projects identified in the Integrated Plan. Of course, it is important that the Integrated Plan prioritize those projects that address the most significant human health and environmental needs.

15. How will water quality issues that are driven by conditions outside the local or state jurisdiction be dealt with especially with regard to priorities, monitoring and measures of success?

One of the early steps in developing an Integrated Plan is to define the scope of the issues that the Plan will seek to address. That can include partnerships with any relevant entity that impacts or could help to address water quality issues within the community. It may not always be possible to have all entities involved in the Plan. The scope of participation is likely to be different in each case, and each Integrated Plan will address the issues that the participants determine can and should be included.

16. How can existing and anticipated TMDLs be incorporated into Integrated Plans?

TMDLs identify pollutant reduction targets for sources that contribute to water quality impairments. To implement TMDLs permitting authorities can require municipalities to meet lower effluent targets necessitating investments to remain in compliance. As it sets priorities and schedules for sequencing actions to meet multiple CWA obligations, an Integrated Plan can incorporate these and other investments necessary to implement final and anticipated TMDLs to provide enough certainty to allow for appropriate investment. However, the need to develop a TMDL does not justify or support delaying investments to meet other known requirements.