WEF Comments on EPA's Draft Integrated Planning Approach Framework issued 1-13-12

Background and Principles

The Water Environment Federation [WEF] commends EPA for undertaking this effort and stands ready to help make this happen.

WEF, along with many others, supports a broader holistic, watershed approach to meeting Clean Water Act goals that will prioritize and address the most significant impacts on water quality in the most effective, affordable, sustainable and innovative ways.

This approach is consistent with and supportive of WEF's Policy on Water Quality which emphasizes the following on priority setting:

The Water Environment Federation supports a priority setting process allowing governments and watershed managers enhanced flexibility in scheduling and standard-setting within the context of economic, technical, and social capabilities.

A priority setting framework must support water quality managers in using appropriate data and tools, promoting inclusive resource protection, conducting economic and risk analyses, considering cross-media impacts, and accounting for regional growth. Water quality priorities and solutions must be established regionally to best address water quality impairment from local and outside sources. The general public should collaborate in priority setting with engineers, scientists, and other experts to ensure long-term support for and implementation of water quality programs.

WEF has recognized that we must modernize our thinking and approaches to implementing the Clean Water Act. The overarching principal should be employment of a holistic approach to water quality management that integrates water quality and quantity and the benefits provided to the environment, community and economy. In 2010, WEF joined NACWA, NRDC, ASIWPCA [now ACWA] and others in developing a set of guiding *Principles for a Viable Watershed Approach* to prioritize and address the most significant current impacts on water quality in the most effective and responsible way. EPA's Framework provides an excellent opportunity to support modernized water quality management on a watershed basis. **We would recommend that the Framework explicitly encourage municipalities and States to use a watershed approach in developing their integrated plans.**

WEF generally supports the Overarching and Guiding Principles set out for this draft Framework. Specifically, we are pleased that:

- An Overarching Principle is to allow municipalities to balance CWA requirements by addressing the most pressing public health and environmental protection issues first. In the current challenging economic environment, municipalities must be able to set clear priorities for spending limited public funds for those projects and activities providing meaningful environmental and public health benefits supported by rate payers.

- Integrated plans will be locally-determined, flexible and voluntary – a bottoms-up, not a top-down approach
- Green infrastructure and other innovations will be encouraged. WEF supports advancing the appropriate use of green infrastructure. Beyond green infrastructure, we will need to consider other innovations by being creative and thinking "outside the box" [Example of including drinking water or energy conservation/generation projects where that's important to a locality]

We do have some suggestions regarding the proposed Principles:

1. **Affordability and ability-to-pay/finance at local level – an extremely significant consideration – should be explicitly recognized in the principles**. While the principles address maximizing effectiveness of funds, disproportionate burdens and financial strategies, affordability is not directly noted. Plans must consider all existing and pending financial obligations [capital and O&M/ongoing]. Affordability will need to be applied cumulatively across all projects in the integrated plan [rather than current one project at a time approach]. Possible wording: "Integrated Planning will allow a municipality and EPA to develop an affordable and implementable plan and schedule to meet CWA requirements incorporating local priorities and economic and financial capabilities and pressures."

2. **EPA should clarify their meaning of "integrated planning will maintain existing regulatory standards".** It may be more appropriate to state that an overarching goal is to utilize all the inherent flexibility allowed for in the CWA, and to remove the barriers established through 40 years of regulation and policy development, e.g., take a fresh look at the implementation flexibility contained in the CWA which will facilitate this integrated planning Framework. EPA should acknowledge the need to reconsider how to implement, and where needed modify, regulations and policy documents developed over the last 40 years that impede municipalities from implementing an integrated approach.

3. **EPA Should Continue to Develop Appropriate Policies and Regulations. For example, EPA should continue efforts to update the Sanitary Sewer Overflow (SSO) Rule.** We have made some significant progress with combined sewer overflows because we have an effective CSO policy that provides clarity. Likewise, we need a comprehensive SSO rule. We made good progress last year providing guidance on the SSO Rule through the listening sessions and the July EPA Workshop. As indicated in the testimony of WEF and other water organizations and utilities last year, the rule should include appropriate analysis protocols, design criteria, and guidance on treatment methods appropriate for wet weather conditions, which are all allowable under the CWA. The SSO Rule should be based on sound, peer reviewed industry guidance such as the 2006 WEF Guide to Managing Peak Wet Weather Flows and the 2010 Core Attributes of Effectively Managed Wastewater Collection Systems prepared by APWA,

ASCE, NACWA, and WEF). We stand ready as an industry to help implement the SSO rule.

4. **EPA should reference existing CWA integrated planning requirements.** While municipalities and States should have the flexibility to determine their best planning approaches to implement the Framework, EPA should recognize that the Clean Water Act already provides integrated planning requirements, particularly in Section 208 [areawide management plans] and Section 303(e) [State planning process]. States and municipalities should be encouraged to use their existing plans and processes, rather than "reinventing the wheel".

5. **EPA should address the role of its Regions and States to assure consistent implementation of these approaches.** WEF members identify inconsistent implementation of EPA's current regulations, policies and initiatives between EPA Headquarters and Regions as a problem. It often appears that Regional staffs are not willing or able to entertain new approaches for various claimed Regional considerations. For this effort to be successful, EPA HQ and Regions will need to strive to be on the same page. As this effort gets underway, EPA HQ should be involved along with the Regions as local integrated plans are developed to provide a national overview and foster consistency in planning.

   Per discussions at the 5 Regional workshops, it appears that EPA itself will not be directly involved in the review or approval of integrated plans, leaving this to the States. While some States may have the necessary staff and capabilities to do this, we are concerned about whether all States will be able to support integrated planning. Also, if EPA defers to the States on approval, then EPA must not come back later and disapprove a plan or an element/approach in the plan if EPA has not reviewed this up front.

Plan Elements

WEF agrees that defining the scope of each individual plan is key and should be determined at the local level. Integrated plans should include the components that are relevant and important to the individual municipality in order to determine their most cost-effective, environmentally significant and affordable projects and their sequencing over time. Components could include: CSOs, SSOs, peak wet weather treatment, stormwater, nutrients, biosolids/energy generation, nonpoint sources, upgrade/repair of aging infrastructure, etc.

WEF thinks the 5 proposed plan elements are generally appropriate. We do offer the following suggestions for specific elements:

- Plan Element 1: WQ, Human Health, Regulatory Issues addressed in Plan

This element should allow a municipality, where appropriate to its needs/concerns, to **address related water issues beyond the CWA, specifically drinking water infrastructure needs [SDWA].** We believe municipalities and utilities are most interested in spending their resources appropriately at the watershed level, not just the regulatory level of the Clean Water Act. Plan Element #1 should be able to be more broadly focused, referencing the watershed and infrastructure improvements and issues that are important at local level.

Element 1 begins with "An **assessment of existing non-compliance** with CWA requirements….". This has a **very negative connotation** and assumes that the permittee is already in non-compliance prior to conducting any assessments. **Consider changing this to "An assessment of compliance status with existing CWA requirements**....".

Need to emphasize that this plan element should delineate clear targets and outcomes for the water quality and other goals addressed by the plan.

- Plan Element 2: Description of existing wastewater and stormwater systems

  May want to clarify that this element should note **how the infrastructure impacts the water resource**, the watershed, and then evaluate the existing infrastructure for its ability to support the protection and enhancement of the physical, chemical and biological integrity. What are the needs of the watershed? How does the existing infrastructure protect and enhance that resource? What are the alternatives? In effect, connect the infrastructure's current performance to the water resources themselves.

- Plan Element 3: Involving relevant Stakeholders

  Agree this is very important. In fact, **involving stakeholders is important in developing each of the other Plan Elements.** Would recommend making this explicit by citing need for stakeholder involvement in each plan element. Also, may want to reference **use of existing state and local public participation processes** as meeting this?

- Plan Element 4: Alternatives and Schedules

  The wording of this element appears to favor pollutant reductions as the criteria used to assess project performance. **Consider changing "pollutant reductions" to "environmental benefits" or "benefits to receiving waters".** A particular project may provide significant environmental protection which can't be easily measured in terms of pollutant reductions. For instance, an urban stream and its aquatic and riparian habitat may be plagued mostly by bank scouring which may not be helped by pollutant reduction measures alone but could be largely solved by stormwater flow control measures.

- Plan Element 5: Measuring success

  We agree that measuring success is important to improving water quality.

  This wording of this element implies the ability to adapt or change the plan at logical points of implementation based on the results from measuring success. For example, the high degree of uncertainty involved in the various aspects of wet-weather management (meteorological phenomena, aquatic and riparian habitats and ecology, biodiversity, local economies, etc.) lends itself to **an adaptive management approach. WEF strongly supports long-term, phased adaptive management strategy and plans,** so the effectiveness of previous work can be assessed and future recommendations appropriately reshaped. Local utilities need to have a long-term plan that can be adapted as conditions warrant that they can count on. **EPA should recognize this and add an element to the Integrated Plan [or expand this element] that anticipates and allows for such modifications**. As part of an adaptive management approach, pilot studies would be effective in researching site-specific innovative strategies.

Implementation: Permits, Enforcement

We support reliance on a permit approach rather than new enforcement actions. We believe that incorporating an integrated plan into NPDES permits is appropriate and feasible. Enforceable NPDES Permits are the appropriate Clean Water Act mechanism for implementing the Integrated Planning Framework. This is also predicated on EPA continuing to improve necessary policy and regulations, such as a reasonable Sanitary Sewer Overflow policy and an updated and implementable stormwater regulation.

Existing consent decrees/orders should be able to be reopened and modified to reflect local integrated plans developed and approved under this Framework

Appropriate schedules will be required for full implementation of an Integrated Plan. From our Members' experience with CSO Long Term Control Plans, the implementation of some Integrated Plans could easily span multiple NPDES permit renewal cycles. EPA should expect that an Integrated Plan will consist of multiple phases with perhaps only a single phase or portions of a phase that could be implemented within a single permit renewal cycle. Going to permit renewal cycles beyond the current 5 years may in many cases be necessary [10+ years]. Full implementation of an Integrated Plan may require multiple decades if only local funding is available for capital and ongoing O&M.

The recent economic downturn has shown that it is impossible to predict the financial future. The need to adapt to climate change and other pressures, such as invasive species, as well as the rapid development of new technologies, has also shown that trying to address water quality problems by locking down long-term solutions is short-sighted. Municipalities should be able to submit

plans that focus on the near-term (five year) commitments with a discussion of how future plans should be developed. The regulatory framework needs to acknowledge this and municipalities should not be penalized as long as they are making substantial progress in implementing the five-year plans and updating as appropriate going forward.