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January 24, 2020

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Mail Code 2355A

Erin Flannery-Keith
Office of Regional Counsel, Region 1
US Environmental Protection Agency
5 Post Office Square
Boston, MA 02109

Submitted via: regulations.gov

Re: NACWA Comments on Center for Regulatory Reasonableness et al. v. EPA, Nos. 16-1246 and 17-1060 (EPA-HQ-OGC-2019-0685)

Dear Mr. Ford and Ms. Flannery-Keith,

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide comments on the US Environmental Protection Agency's (EPA) proposed settlement agreements for Massachusetts and New Hampshire small municipal separate storm sewer systems (MS4s) (EPA-HQ-OGC-2019-0685).

NACWA represents more than 330 municipal wastewater treatment facilities and stormwater systems across the country that are responsible for managing billions of gallons of wastewater and stormwater every day to ensure the continued protection of public health and the environment. NACWA's membership includes 7 public utilities in Massachusetts and 1 public utility in New Hampshire.

NACWA supports EPA Region 1's proposed stormwater settlement agreements for Massachusetts and New Hampshire. EPA's proposed settlements demonstrate progress from the original permit language that was not only impracticable for the permittees to comply with but, more concerning, was outside the statutory boundaries of the Clean Water Act (CWA). NACWA strongly supports EPA's elimination of the "cause and contribute to a water quality exceedance" language and proposed revisions that allow communities in Massachusetts and New Hampshire an alternative compliance schedule in situations where it is impracticable for permittees to comply with pollutant reductions. The new, revised language is much more consistent with the requirements of the CWA.

The original permits were a severe departure from the CWA's unique maximum extent practicable (MEP) standard for discharges from MS4s. These overly prescriptive permits

would have required MS4 permittees to meet water quality standards and total maximum daily load requirements beyond the MEP standard of the CWA. In addition, they would have been unachievable for many communities and created a substantial burden by diverting limited resources away from existing, more effective stormwater and water quality programs.

Given that EPA issues permits directly for Massachusetts and New Hampshire, NACWA was deeply concerned that the overburdensome and illegal requirements of the original permits could have set a negative precedent for other stormwater permits throughout New England and around the country. NACWA is appreciative of EPA's willingness to work through these concerns with our Massachusetts and New Hampshire utilities through a constructive discussion process to reach a mutually agreeable outcome.

Many small and large MS4 communities throughout the US are witnessing more stringent stormwater permitting requirements that are increasingly prescriptive and are testing the bounds of legality under the CWA, including numeric effluent limits and strict compliance with water quality standards. These prescriptive stormwater requirements are posing significant challenges often with little return in environmental benefit. EPA's revisions here from the original, impracticable permits are a positive signal to communities throughout New England and beyond that it is possible to reach more legally appropriate and reasonable permits through a negotiation process where all parties are committed to reaching a mutually agreeable outcome.

NACWA would like to thank its members in Massachusetts and New Hampshire, and in particular the Massachusetts Coalition for Water Resources Stewardship, for their stormwater expertise and tremendous patience that were instrumental in negotiating a favorable settlement.

NACWA applauds EPA Region 1 along with the other parties of this mediation that were able to come to a rational settlement agreement that will provide important environmental protections while simultaneously providing the more than 250 communities with a more flexible path forward to managing stormwater.

If you have any questions, please contact Emily Rimmel, NACWA's Director of Regulatory Affairs by phone at 202/533-1839 or by email at erimmel@nacwa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "A Krantz", with a large, sweeping underline.

Adam Krantz
Chief Executive Officer
NACWA