

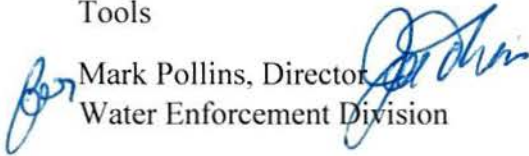


UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 26 2019

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

SUBJECT: Implementation of Integrated Planning and Green Infrastructure through Enforcement Tools

FROM:  Mark Pollins, Director
Water Enforcement Division

TO: Enforcement and Compliance Assurance Division Directors, Regions 1-10
Regional Counsels, Regions 1-10

The purpose of this memorandum is to ensure consistent implementation of the Water Infrastructure Improvement Act (“WIIA”) which requires EPA to inform municipalities of the opportunity to develop an integrated plan and to promote the use of green infrastructure, as appropriate, in consent decrees and settlement agreements in enforcement actions. WIIA, which was signed into law on January 14, 2019, amends Sections 309, 402, and 502 of the Clean Water Act (CWA). While our current CWA enforcement practice has included the promotion of integrated planning and green infrastructure, systematizing these efforts will result in a more consistent and efficient approach to these cases.

WIIA requires EPA to, in conjunction with an enforcement action under CWA Sections 309(a) or (b) relating to municipal discharges, inform a municipality of the opportunity to develop an integrated plan.¹ WIIA defines an integrated plan as “a plan developed in accordance with the Integrated Municipal Stormwater and Wastewater Planning Approach Framework, issued by the Environmental Protection Agency and dated June 5, 2012.”² WIIA also requires the Agency to promote the use of green infrastructure and coordinate the integration of green infrastructure into permitting and enforcement efforts.³ WIIA defines green infrastructure as “the range of measures that use plant or soil systems, permeable pavement or other permeable surfaces or substrates, stormwater harvest and reuse, or landscaping to store, infiltrate, evapotranspire stormwater and reduce flows to sewer systems or to surface waters.”⁴

¹ Clean Water Act Section 309(h)(1), 33 U.S.C. 1319(h)(1).

² Clean Water Act Section 402(s)(1), 33 U.S.C. 1342(s)(1).

³ Clean Water Act Section 519(a), 33 U.S.C. 1251(a).

⁴ Clean Water Act Section 502(27), 33 U.S.C. 1362(27).

As early as practicable in any CWA enforcement action relating to municipal discharges, EPA staff should inform the municipality of the opportunity to develop an integrated plan. EPA staff should also provide the municipality with copies of the following documents: Water Infrastructure Improvement Act (Public Law No. 115-436); EPA's 2012 "Integrated Municipal Stormwater and Wastewater Planning Approach Framework" (Integrated Planning Framework); and EPA's 2014 "Greening CSO Plans: Planning and Modeling Green Infrastructure for Combined Sewer Overflow Control." I have attached a copy of each of these documents to this memorandum for reference. EPA staff should engage with the municipality to discuss these documents. EPA enforcement staff should also document these efforts (e.g., a log of a telephone conversation or other correspondence) in the case record.

Going forward, consent decree approval memos for CWA enforcement actions relating to municipal discharges should include an integrated planning discussion and a green infrastructure discussion. In the integrated planning discussion, staff should explain how the case team informed the municipality of the opportunity to develop an integrated plan, and, if applicable, describe in detail how the settlement includes any of the elements described in EPA's 2012 Integrated Planning Framework. In the green infrastructure discussion, the case teams should explain EPA's efforts to promote the use of green infrastructure, and, if applicable, explain in detail the types of green infrastructure that are included in the settlement.

In addition to the requirements discussed above, the Act also authorizes any municipality that is under an administrative order under CWA Section 309(a) or settlement agreement (including a judicial consent decree) under CWA Section 309(b) that has developed an integrated plan consistent with CWA Section 402(s) to request a modification to its existing administrative order or settlement agreement based on that integrated plan.⁵ However, the Act also expressly creates a "Transition Rule," explaining "in any case in which a discharge is subject to a judicial order or consent decree, as of the date of enactment of this subsection, resolving an enforcement action under this Act, any schedule of compliance issued pursuant to an authorization in a State water quality standard may not revise a schedule of compliance in that order or decree to be less stringent, unless the order or decree is modified by agreement of the parties and the court."⁶

Implementation of WIIA will serve to enhance EPA's CWA enforcement program by promoting the use of both integrated planning and green infrastructure. Formal enforcement will remain an important tool to address serious noncompliance and create general deterrence. We appreciate your efforts to encourage integrated planning and green infrastructure in municipal enforcement settlements and to ensure that the Agency complies fully with the requirements of this new legislation.

If you have any questions, please contact me at (202) 564-4001, or have your staff call Sarah Rae at (202) 564-2841.

⁵ Clean Water Act Section 309(h)(2), 33 U.S.C. 1319(h)(2).

⁶ Clean Water Act Section 402(s)(6)(B), 33 U.S.C. 1342(s)(6)(B).