

Antidegradation/Exfiltration

QUESTIONS

The following questions were distributed to the Legal Affairs Committee via e-mail on January 24, 2007:

“We are reaching out to you as a member of NACWA's Legal Affairs Committee to see if you can assist two NACWA members with the following requests for information:

1.) A member has submitted a question regarding state antidegradation procedures and asked that we circulate the question for review. This member's state has recently proposed a new antidegradation procedure containing a 2% median household income standard to be used in determining the socio-economic importance (SEI) of a proposed discharge. The member agency would like to know if there are any members whose states currently use a 2% median household income standard for SEI, and if not, what standard is used.

2.) A NACWA member agency has recently been named in a lawsuit by an environmental group alleging that the agency has violated the Clean Water Act (CWA) due to sanitary sewer overflows (SSOs) and exfiltration from the sanitary sewer system. The agency would like to know whether any NACWA members have dealt with exfiltration as a violation of the CWA, and if so what advice/information they might be able to share.”

RESPONSES/ANSWERS

NACWA received the following responses from members:

Georgia: The State of Georgia antidegradation economic analysis can be found at http://www.nacwa.org/getfile.cfm?fn=2007-02ga_dpa.pdf.

Hunting Beach, CA: In about 1999 the City of Huntington Beach, CA was found criminally liable for “exfiltration” from its sewer system after it had documented leaks (including literally missing sections of its pipes) which were not reported. Also, the city did not act immediately to repair the problem. No one went to jail, but they paid a fine and got a black eye in the community. The City was quick to settle the matter and agree to make the overdue fixes. As a part of the waste discharge requirements (State permit) for sanitary sewer overflow, the City produced this document that can be found at <http://www.ocsd.com/civica/filebank/blobdload.asp?BlobID=5051>.

New Jersey: NJ was going to adopt this approach and then withdrew it. The 2% is a widespread cost impact level, that is not the same test used for typical antideg.review.- That is the test for allowing waivers to federal WQ requirements under 40 CFR 131.10(g)..