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May 6, 2011

Louis Eby
Special Assistant
U.S. EPA, Office of Wastewater Management
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Mail Code: 4203M
Washington, DC 20460
Via Electronic Mail: eby.louis@epa.gov

Dear Louis,

NACWA appreciates the opportunity to comment on the U.S. Environmental Protection Agency's (EPA) environmental justice (EJ) permitting initiative being developed under the Agency-wide Plan EJ 2014 effort. We shared the initial list of tools and recommendations for the permitting initiative with our members, but were unable to identify any additions for the list or specific examples of past permits/permit processes that examined EJ issues. Attached are some comments we provided last fall on the overall Plan EJ 2014 effort. These are still relevant for the permitting effort, though not targeted directly at the list of permitting tools and recommendations.

The main concern raised in our October 1, 2010, letter is the lack of recognition in EPA's current EJ efforts for the potential impacts the cost to comply with environmental regulations can have on low income populations. When our public wastewater utilities raise rates to comply with regulations, low income populations bear a disproportionate share of the load for meeting those new requirements. This is especially true in urban areas that have committed to long-term projects to upgrade their sewer systems, where rates have been pushed to the limits of affordability. We recognize that EPA's EJ efforts have not traditionally considered these types of impacts, but they could easily be considered in a permitting context.

Our members have also raised concern over any overly-prescriptive permitting regime developed at the federal level to address EJ concerns. As you can imagine, EJ issues are very local. Working to improve lines of communication and outreach can help to

better address these issues at the local level, but suggesting prescriptive permit conditions, like increased or enhanced environmental monitoring, or outlining specific processes for permit writers to follow, seem to presuppose what the major local issues are. Clean Water Act permits are primarily intended to ensure our discharges comply with the appropriate federal regulations. Permits are not written at the local level. Instead, state or even in some cases Regional, permit writers will draft a permit. Given the potential for EJ issues to be very divisive and politically charged, it will be very difficult for permit writers to adequately address the dynamics of the situation through the federal permitting process.

There is a role for permit writers to play in ensuring that EJ considerations are being addressed. Many of the tools and recommendations you have listed could be incorporated into a permit writers guidance on EJ to ensure they know what to look for and can engage permittees during the permit development process. As drafted, however, the list seems to suggest that prescriptive procedures will be provided, checklists etc., as well potential permit conditions that are not related to Clean Water Act compliance. We're interested in making sure that EPA strikes the right balance here.

Again, thank you for the opportunity to provide some input. Please let me know if you have any questions.

Sincerely,



Chris Hornback

Senior Director, Regulatory Affairs

Attachment

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Milwaukee Metropolitan

Sewerage District

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EXECUTIVE DIRECTOR

Ken Kirk

October 1, 2010

Charles Lee

Director of the Office of Environmental Justice

U.S. Environmental Protection Agency

Ariel Rios Building

1200 Pennsylvania Avenue, NW

Mail Code: 2201A

Washington, DC 20460

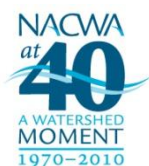
Via Electronic Mail: lee.charles@epa.gov

Dear Mr. Lee:

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments to the Office of Environmental Justice (OEJ) regarding development of the U.S. Environmental Protection Agency's (EPA) Draft Plan EJ 2014. Representing nearly 300 of the nation's publicly owned treatment works (POTWs), NACWA is the leading advocate for the clean water utility community and provides an important municipal perspective to the timely and important discussion surrounding environmental justice (EJ) issues.

NACWA is committed to improving water quality across the nation and to exploring innovative ideas that will achieve the original goals of the Clean Water Act (CWA). NACWA is also supportive of EPA's recent efforts to increase the focus on EJ issues and believes true environmental progress cannot be achieved in this country unless it is shared in equitably by all. However, NACWA is concerned that EPA has not sufficiently considered the affordability challenges facing many urban communities around the nation as the Agency elevates EJ considerations as a key policy focus. In particular, NACWA believes the need for a new approach to making financial capability and affordability determinations has not been adequately addressed in EPA's recent Plan EJ 2014.

Our nation's clean water and stormwater utilities will be required to spend hundreds of billions of dollars in the coming decades to address wet weather concerns, nutrient issues, biosolids management, and water quality standards — in addition to reinvesting in existing infrastructure. Many EJ communities are finding it difficult, especially under the current economic circumstances, to afford the increased water and sewer rates that will come along with these new environmental mandates. The simple fact is that municipalities throughout the country continue to invest in their systems but face a regulatory landscape where



everything is a priority and economics are an afterthought. NACWA believes it is important for the federal government to partner with local governments and clean water utilities to improve water quality through revised affordability guidelines. This will allow municipalities to make the needed investments to improve water quality, the environment, and public health for all communities in a sustainable manner.

While NACWA believes increased federal funding is critical to achieving national water quality objectives and is an EJ issue, so too is the affordability issue. As part of its focus on EJ considerations, EPA should revisit its affordability criteria and how it determines what a community can or cannot afford under the CWA.

Specifically, EPA's 1997 document, *Combined Sewer Overflows — Guidance for Financial Capability Assessment and Schedule Development*, is woefully out of date and the current emphasis on EJ concerns offers an excellent opportunity for revisions.

NACWA has long argued that EPA must begin to look at the affordability issue more broadly and holistically. It is not reasonable to assume that communities can afford to pay 2 percent of their median household income for combined sewer overflow control while also dealing with the implementation of sanitary sewer overflows, total maximum daily loads, stormwater control, nutrient control and emerging contaminants, climate change mitigation and adaptation, and the many other environmental issues with which municipalities must contend. The current EPA affordability approach leads to an indefensible position that everything and anything is affordable — a situation that, as the recent economic downturn has made clear, is not and cannot be the case, particularly for EJ communities already facing significant economic pressures. Moreover, the issue of affordability must be looked at within the context of maximizing environmental benefit to all within a community in return for their investment.

NACWA requests that EPA's OEJ take into consideration affordability concerns when developing Plan EJ 2014 and accelerating compliance and enforcement initiatives. Please feel free to visit our [Money Matters — Smarter Investment to Advance Clean Water webpage](#) to learn more about NACWA's efforts on this key issue. Again, NACWA appreciates the opportunity to provide input into this effort by EPA. Please contact me at ngardner-andrews@nacwa.org or 202/833-3692 if you have any questions.

Sincerely,



Nathan Gardner-Andrews
General Counsel