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July 7, 2016

Charles Lee

Deputy Associate Assistant Administrator for Environmental Justice

U.S. EPA, Office of Environmental Justice (2201-A)

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Mr. Lee:

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on EPA's draft *EJ 2020 Action Agenda (Agenda)*. NACWA is the advocacy voice for the nation's publicly owned wastewater and stormwater utilities, and our nearly 300 utility members nationwide are working on the front lines of environmental protection every day to ensure clean water. On behalf of our members, we are pleased to provide an important municipal perspective on the draft *Agenda*.

NACWA commends EPA for drafting a robust plan that will advance EJ considerations in all aspects of the Agency's mission and initiatives. This document will play an important role in fostering needed discussion about EJ's role in environmental policy, and NACWA supports a number of key elements in the *Agenda*. At the same time, there are some critical issues around affordability and EPA's role in assisting regulated entities in proactively avoiding enforcement actions that NACWA believes must be addressed before the document is finalized. This comment letter will outline the most positive aspects of the draft *Agenda* from NACWA's perspective, discuss a number of revisions the Association would like to see in the final version, and highlight current NACWA initiatives on EJ issues where we are interested in further discussion and coordination with EPA.

**Draft *Agenda* Recognizes Importance of Partnership at All Levels of Government**

NACWA is pleased to see that, throughout the document, EPA recognizes the importance of working closely with state and local government partners to advance EJ priorities. The Association is also pleased the document acknowledges the important role of local governments as co-regulators in implementing federal environmental policies. Municipal clean water utilities have long been critical partners and co-regulators within the Clean Water Act context – particularly around industrial pretreatment and municipal stormwater issues – and it is gratifying to see an acknowledgement of this co-regulator role in the context of EJ concerns.

The importance of working collaboratively with local government partners is evident throughout the document, not only in the introductory and overview sections but also in a number of the key priority areas. For example, Chapter 6 on “States and Local Governments” directly highlights the importance of coordination with other governmental and co-regulator partners to advance EJ initiatives. In particular, NACWA appreciates the acknowledgment of shared values around EJ in this chapter and EPA’s statement that “co-regulators share a broad consensus about reflecting EJ principles in our work, despite differences in terminology when we describe them.” NACWA strongly shares this viewpoint, which helps lay the groundwork for continued dialogue between the municipal clean water utility community and EPA on how best to advance EJ and initiatives that benefit our communities even if we have somewhat different understandings of what issues fall within a broader EJ framework.

Other sections of the *Agenda* also emphasize the importance of collaboration with local government partners. For instance, strategy #2 in the Permitting priority area (Chapter 3) specifically highlights EPA’s intention to collaborate with “local co-regulatory partners” and local communities on EJ issues in the permitting context. Similarly, strategy #2 under the Compliance and Enforcement priority area (Chapter 4) also highlights joint work with “local government partners” on enforcement initiatives related to EJ priorities. Work in the permitting and enforcement realms are of particular interest to NACWA members, and we are pleased to see a focus on collaboration with local governments as part of the *Agenda*. We strongly encourage EPA to keep this language, as well as the language previously identified from Chapter 6, in the final *Agenda* document.

#### ***Action Agenda Needs Broader EJ Definition, More Focus on Affordability***

One key change NACWA would like to see in the final *Agenda* is a clearer acknowledgement from EPA that the definition of EJ, and the understanding of what it encompasses, can be broader than how the Agency has traditionally defined the term. The draft *Agenda* hints at this possibility in the language in Chapter 6 (discussed above) that acknowledges the use of different terminology by different partners in addressing EJ issues. But a more explicit statement by EPA in the final document recognizing that the term “environmental justice” can have broader application, addressing a variety of different concepts for different partners, would be a welcome sign that the Agency recognizes the diversity of concerns that fit within the EJ concept.

This is particularly important for the municipal clean water community in two ways. First, many utilities are engaged in what they consider to be “community service” or “community benefits” activities and outreach to their communities. These actions are part of an important evolution by municipal clean water agencies beyond merely providing clean water services to becoming community partners and community assets. Some may not consider these actions to be traditional EJ activities, but these efforts could also fall within a broader context of EJ initiatives. Ensuring these types of community service initiatives are acknowledged as part of the larger EJ umbrella will help to further incentivize and encourage these programs by more utilities.

Second, NACWA and its members strongly believe that any evaluation of EJ impacts must include consideration of community affordability concerns. Incorporating affordability into the broader definition of EJ is a central priority for NACWA. We have previously explained the importance of this issue for our members in comments we filed with the Agency last year on the draft *EJ 2020 Action Agenda Framework* – those comments are attached to this letter for reference.

NACWA was pleased to see EPA address affordability concerns in its “Response to Public Comments” on the *Action Agenda Framework*, particularly the Agency’s commitment to “work with interested water utility and community partners” in considering financial capability and affordability challenges for water utilities within the EJ context. This is an important step forward in recognizing the importance of affordability considerations in EJ discussions, and NACWA appreciates EPA’s statements in this regard. However, NACWA also requests that EPA more directly acknowledge the need to incorporate affordability issues in EJ efforts – particularly in the permitting and enforcement contexts – as part of the final *Agenda* document.

### **EPA Should Focus on More Proactive Actions to Avoid Enforcement**

Along these lines, NACWA would also like to see the final *Agenda* document be more proactive in addressing potential EJ concerns before they occur, rather than just being reactive in trying to remedy them after the fact. This is particularly true with regard to enforcement issues. A number of NACWA members have expressed particular concern in this regard with respect to Chapter 4 of the document on Compliance and Enforcement.

As currently written, Chapter 4 appears to presuppose additional enforcement efforts over the next five years to address EJ concerns. NACWA believes it would be more effective for EPA to focus on assisting potential violators with compliance assistance related to EJ issues – especially if local governments or clean water utilities are involved – before proceeding straight to an enforcement action. In line with EPA’s focus on partnerships to advance EJ initiatives, NACWA encourages more proactive compliance assistance on the part of the Agency with local governments and utilities to help avoid enforcement efforts in the first place. This approach not only will address EJ issues earlier in the process in more effective ways, but also will help avoid costly enforcement proceedings that will only worsen the affordability challenges facing local communities. EPA should consider this important issue as it finalizes the *Agenda*.

Finally, NACWA requests that the final *Agenda* include specific reference to local clean water utilities as EJ partners. While NACWA is appreciative of EPA’s clear acknowledgment of local governments as collaborators, we also would like to see a more specific reference to water and clean water utilities as partners at the local level. This addition in the *Agenda* would help emphasize and encourage partnership with local water utilities to advance EJ priorities.

### **Current NACWA EJ Initiatives & Opportunities for Collaboration**

As EPA is aware, NACWA and the Agency have had a number of productive conversations in recent months about ways in which the Association and its members can work with EPA to better address a wide range of EJ issues. In line with those conversations, we would like to briefly outline a number of NACWA’s current EJ initiatives that align with key priorities included in the draft *Agenda*.

First, NACWA has begun work to craft an *Environmental Justice and Community Benefits Compendium* highlighting the work NACWA member utilities are already doing to provide holistic community benefits and address EJ issues for their ratepayers. The document will include case studies of Association members focusing on the community outreach, community service, environmental justice initiatives, and similar work of these utilities to ensure that EJ considerations are part of their operational and capital investment programs, as well as part of their ratemaking process. The final document can serve as an excellent way to encourage other utilities to pursue similar EJ and community benefit projects. NACWA also believes it can help accomplish EPA’s goal in the *Agenda* to provide further examples at the local level of successful EJ practices.

Second, NACWA is working to develop a utility-to-utility partnership program that will allow clean water agencies to partner with one another and learn from each other in developing effective EJ initiatives at the local level. Utilities within the municipal clean water sector have differing levels of experience and knowledge addressing EJ concerns within their communities. NACWA believes this partnership program, which will be established by the end of this year, will help to provide a better level of understanding within the municipal clean water sector on EJ issues. It will also further EPA’s strategy in the *Agenda* of supporting peer-to-peer learning to identify best practices on how to address environmental justice concerns.

NACWA looks forward to continued discussions with EPA on these efforts moving forward and on ways in which the Association and the Agency can continue collaboration on EJ issues in the future.

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NACWA appreciates the opportunity to provide these comments on the draft *EJ 2020 Action Agenda* and EPA's effort to advance EJ initiatives. If you have any questions about these comments or would like to discuss them further, please don't hesitate to contact me at [ngardner-andrews@nacwa.org](mailto:ngardner-andrews@nacwa.org) or 202/833-3692.

Sincerely,

A handwritten signature in black ink that reads "Nathan Gardner-Andrews". The signature is written in a cursive, flowing style.

Nathan Gardner-Andrews  
Chief Advocacy Officer

CC: Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance (OECA)  
Mustafa Ali, Associate Assistant Administrator for Environmental Justice, OECA  
Joel Beauvais, Deputy Assistant Administrator, Office of Water



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June 11, 2015

Charles Lee

Deputy Associate Assistant Administrator for Environmental Justice

U.S. EPA, Office of Environmental Justice (2201-A)

1200 Pennsylvania Avenue, NW

Washington, DC 20460

Dear Mr. Lee:

The National Association of Clean Water Agencies (NACWA) appreciates this opportunity to provide comments on EPA's draft *EJ 2020 Action Agenda Framework*. NACWA is the advocacy voice for the nation's publicly owned wastewater and stormwater utilities, and our nearly 300 utility members nationwide are working on the front lines of environmental protection every day to ensure clean water. On behalf of our members, we are pleased to provide this vital municipal perspective on the draft *Framework* and environmental justice (EJ) issues in general.

NACWA members are committed to advancing EJ, and many are already including EJ considerations in how they manage their utilities and interact with their communities. This is especially true regarding low income and economically disadvantaged populations within their service areas. Utilities are also actively embracing EJ as a central component of the Utility of the Future concept, which is a blueprint created by the municipal clean water community to encourage more innovative thinking about how utilities serve their communities. NACWA is supportive of EPA's EJ efforts and applauds the Agency for proposing the draft *EJ 2020 Framework*. However, NACWA believes the *Framework* – and EPA's EJ efforts overall – must include a greater focus on the very significant financial capability and affordability challenges that communities all across the nation are facing, especially low-income urban populations.

Clean water and stormwater utilities will be required to spend hundreds of billions of dollars in the coming decades to address a variety of clean water challenges associated with wet weather, nutrients, biosolids management, and stricter water quality standards. These expenditures are the direct result of federal environmental mandates under the Clean Water Act (CWA), often implemented as part of federal consent decrees or enforcement orders. In addition, utilities have an obligation to operate and maintain current assets – e.g., the necessity to maintain, replace and upgrade existing infrastructure. These costs are not discretionary as they reflect the

cost of doing business for a utility. As a result, many utilities – especially those with large EJ populations – are finding it difficult to afford the increased water and sewer rates necessitated by their existing obligations coupled with new environmental mandates. This is particularly true in the wake of the Great Recession, from which many communities are still struggling to recover economically.

NACWA raised similar points with EPA in our 2010 comments on the Agency's draft *Plan EJ 2014*. Our concerns remain as valid today as they were then. However, since 2010, a number of NACWA members have conducted extensive demographic and economic surveys of their service areas and now have much better data to quantify the disproportionate impact that rate increases required by CWA mandates are having on economically distressed EJ populations.

These studies have demonstrated that clean water rates as a percentage of median household income (MHI) – which is the indicator EPA looks at to determine affordability – can vary widely among segments or individual communities in a given service area. For instance, one set of data suggested that, while the percentage of MHI for monthly clean water bills in the top income quintile could range between .74% and 2.98%, the range for the same bill in the bottom income quintile was between 2.60% and 10.42% of MHI. That is a significant and very concerning difference in affordability between the top and bottom income brackets, and highlights the disproportionate economic burdens being placed on economically distressed communities.

NACWA raises this affordability concern not as an excuse to avoid making needed clean water investments, but instead to emphasize the unfortunate but all too real flip side of federal clean water mandates that many communities are struggling to address. On the one hand, EPA has indicated the regulatory and enforcement CWA requirements being imposed on many communities are in part to address environmental concerns disproportionately impacting EJ populations. But on the other hand, it is those very same EJ populations that are most often economically distressed and least able to afford the significant rate increases that follow, bearing a disproportionate percentage of the cost for the overall community.

This is a contradiction with respect to EJ priorities that, NACWA respectfully submits, EPA has not yet resolved. While EPA has taken important and very helpful steps in recent years to provide communities more flexibility in meeting CWA requirements through the Integrated Planning Framework and related Financial Capability Framework – for which NACWA is grateful and applauds the Agency – more work must be done in recognizing the EJ considerations involved in financial capability and affordability issues. This is particularly true with respect to requirements around federal consent decrees, which are more often than not the largest single drivers of large-scale, costly investments by clean water utilities.

Specific to the draft *EJ 2020 Framework*, NACWA suggests two targeted changes that could more directly incorporate concepts of community financial capability and affordability in the document without altering its overall intent. First, NACWA recommends that the first goal of the *Framework* be expanded to read as follows: “Deepen environmental justice practice within EPA programs to improve the health and environment of overburdened communities *in a manner that recognizes the financial challenges facing economically distressed populations.*” (New language in italics). Similarly, NACWA suggests the first bullet under subsection C of the first goal be reworded as follows: “Continue to advance environmental justice goals comprehensively through targeting, case development, and resolution of compliance and enforcement actions in overburdened

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June 11, 2015

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*communities, taking into account financial capability and affordability challenges facing low-income and economically distressed populations.”*

Beyond the *Framework*, NACWA encourages EPA to pursue additional efforts to include financial capability and affordability concerns for low income populations in the Agency’s EJ efforts, especially those created by EPA’s own clean water environmental mandates to local governments. As part of this effort, NACWA strongly suggests EPA include a representative from the municipal clean water utility community on the National Environmental Justice Advisory Council (NEJAC). Having an individual from this key stakeholder group on the NEJAC would provide the council with valuable insights from the municipal clean water sector. NACWA has nominated a number of its members for seats on the NEJAC in recent years, and is hopeful a municipal utility representative can be seated on the NEJAC soon.

NACWA appreciates the opportunity to provide these comments on the draft *EJ 2020 Framework* and appreciates EPA’s effort on EJ issues. If you have any questions about these comments or would like to discuss them further, please don’t hesitate to contact me at [ngardner-andrews@nacwa.org](mailto:ngardner-andrews@nacwa.org) or 202/833-3692.

Sincerely,



Nathan Gardner-Andrews  
General Counsel

CC: Ken Kopocis, Deputy Assistant Administrator, Office of Water  
Cynthia Giles, Assistant Administrator, Office of Enforcement and Compliance Assurance