



May 19, 2006

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Via Electronic Mail: director@gasb.org

Dear Sir or Madam:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to comment on the Government Accounting Standards Board's (GASB) proposed standard, *Accounting and Financial Reporting for Pollution Remediation Obligations (Draft Standard)*. NACWA and its nearly 300 public wastewater treatment agency members understand the importance of accurate financial reporting and are very familiar with the potential demands additional requirements and obligations can place on the limited resources of municipal governments.

Publicly owned wastewater treatment works (POTWs) treat wastewater generated by residential, commercial, and industrial users of the sewer system. We do not create or discharge pollutants, but treat polluted water and then discharge an effluent that meets very stringent state and federal requirements. POTWs also, in the process of treating wastewater, end up with other products which include grit and screenings, grease, and sewage sludge. These products are disposed of in accordance with all applicable standards. Based on discussions with representatives of GASB, we understand that the *Draft Standard* was not intended to apply to costs POTWs may incur in conducting their core business, namely treating wastewater to meet permit requirements and managing all other wastes in accordance with applicable standards.

There are, however, instances where a POTW, in the course of complying with Clean Water Act mandates, may be required by law to incur substantial costs that appear to be covered by the *Draft Standard*. Consider the following two examples:

1. POTWs may be required to install additional treatment technology to meet new permit requirements imposed through the Clean Water

Act's total maximum daily load (TMDL) program. That program lists impaired waterways that contain too much of a particular pollutant and assigns a maximum load to each permitted discharger (often a POTW) impacting the waterway to decrease the discharge of the pollutant to a level that will allow for improved water quality and, ultimately, a delisting of the waterway from the impairment list.

2. In some communities, combined sewer overflows (CSOs) resulting from large precipitation events can have an impact on water quality. Many POTWs across the country have signed federal or state consent decrees, or have otherwise developed long-term plans to address these overflows, requiring the commitment of hundreds of millions of dollars over several years.

Again, based on discussions with a GASB representative, NACWA understands that these specific scenarios would not be covered by the draft. Nevertheless, the *Draft Standard* has been interpreted by some to cover these situations and NACWA requests that GASB provide additional guidance or examples with regard to what is or is not covered.

One scenario that may be covered by the *Draft Standard* involves the issue of sanitary sewer overflows (SSOs) that impact private property. If an SSO adversely impacts a building (e.g., basement backups) and the cause of the SSO is attributable to a malfunction of the wastewater collection system, the POTW may have a policy to work with the impacted property owner(s) to resolve the matter or the POTW may informally offer to help remediate the problem. NACWA believes this type of scenario may fall under the following statement from the *Draft Standard*, "the government is compelled to take remediation action because pollution creates an imminent endangerment to public health or welfare or the environment, leaving it little or no discretion to avoid remediation action."

In these cases property owner(s) can make potential claims for property damage and/or health impacts (mold, other claims). Given the fact that the contamination event and subsequent cleanup may take place over a short time period, it seems unlikely that a POTW would ever have an outstanding obligation to cleanup the 'existing' pollution. Still, a POTW may not know when or if any future claims may arise from such incidents, and therefore would not know how to report these potential obligations under the *Draft Standard*. NACWA seeks clarification from GASB on this scenario.

Additional Issues Needing Clarification

In addition to assessing the general applicability of the *Draft Standard*, there are two additional points on which NACWA would like clarification.

One NACWA member provided two example scenarios that may constitute "obligating events" under the *Draft Standard*. In these instances, contamination is expected to be encountered as part of a construction project, but the governmental organization will not be required to remediate the entire site or source of pollution, only properly dispose of contaminants that are encountered.

For example, the NACWA member is currently installing a new interceptor sewer. They do not own any of the property along the route but are buying an easement or using public right-of-way. The utility conducted a Phase I environmental site assessment for the entire route and two locations where the pipe must go are known contamination sites (petroleum releases from closed gas stations). The utility will not be remediating the sites, just properly disposing of any contaminated soils or groundwater as they move through the area. They have

worked with the state regulatory agency and have been informed that they will not be named as a potentially responsible party, since their only involvement with the sites is performing necessary construction.

In addition to the above example, the NACWA member has a plant that they are phasing out and converting to a lift station. They own the site and a Phase I site assessment found that there was petroleum contamination that was coming from an adjacent property and was detected in a monitoring well located on the POTW's property. In constructing the lift station and decommissioning/demolishing the plant, they will only clean up what contaminants they encounter, not remediate the off-site source.

Would either of these scenarios be considered an obligating event? These are obviously specific examples that GASB would probably not include in the final standard, but NACWA believes they reflect a general lack of understanding among municipalities as to what constitutes an obligating event and when the standard would apply.

Another NACWA member expressed concern with the requirement to book a liability based on a reasonably estimated amount. For those communities that have signed consent decrees for eliminating CSOs or making other improvements (though these types of expenses may not be subject to the standard at all, as discussed above), this could mean posting millions in liabilities on balance sheets prior to any actual construction occurring. This in turn would likely lead to reduced ratings by the Credit Rating Agencies which would make it more difficult and more expensive to obtain funding. The term "reasonably estimated amount" is vague. It is possible that some communities may simply post the transactions once they incur an actual expense, which would defeat the uniformity requirement that GASB is trying to obtain.

If the substantial costs discussed in the paragraph above are in fact subject to reporting under the *Draft Standard*, NACWA is recommending that POTWs provide such estimates in a footnote to their financial statements. This would provide a disclosure to those parties that rely on the financial statements while not directly impacting the statements.

NACWA appreciates the opportunity to comment on the Draft Standard. Please contact me at 202/833-9106 if you have any questions or would like to discuss our comments further.

Sincerely,



Chris Hornback
Director, Regulatory Affairs