



A Clear Commitment to America's Waters

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January 10, 2007

Ben Grumbles
Assistant Administrator
Office of Water, U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, N. W., Mail Code: 4101M
Washington, DC 20460
Via Facsimile

Re: Proposed Enhancements to EPA's "Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development"

Dear Mr. Grumbles: 

NACWA has on several occasions discussed with the U.S. Environmental Protection Agency (EPA) its ongoing review of the now ten-year old *Combined Sewer Overflows – Guidance for Financial Capability Assessment and Schedule Development (Guidance)*. The Association's membership appreciates your leadership in seeking to review this document and urges the Agency to take this opportunity to make some long overdue enhancements/revisions to the existing guidance document. NACWA applauds this effort and is anxious to provide relevant information based directly on the experiences of the Association's public member agencies.

This letter seeks to accomplish two objectives. First, NACWA is making recommendations for the immediate enhancement of the existing guidance document; second, NACWA is proposing a broader array of enhancements which address the Agency's approach to affordability and financial capability in the context of its Wet Weather Policy – including combined sewer overflows (CSOs), sanitary sewer overflows (SSOs), stormwater, total maximum daily load (TMDL) implementation and other clean water obligations.

Existing Guidance Enhancements

Given EPA's promotion of local solutions and innovations to address the increasing funding gap utilities face, NACWA believes that it is time to rethink the *Guidance's* approach to assessing a community's financial capability. In its *Guidance*, the Agency takes a prescriptive approach based on a static view of socioeconomic indicators and the median household income of a community. This approach is

useful as a relative indicator of a community's ability to afford a given program, but is ultimately inadequate by itself in many cases.

While the *Guidance* has numerous references stating that flexibility and unique local conditions should play a prominent role in the affordability analysis,¹ NACWA public utility member experience is that its significance is downplayed, especially in enforcement action negotiations. One reason for this is that the current approach does not have a mechanism to incorporate these unique local conditions in the structured "scoring" process. This leads to negotiation scenarios where the prescribed scoring guidance controls and unique, site specific economic conditions of the local community must be presented to the Government with no specific rules for interpreting the data and reaching conclusions.

Specific criteria or another alternative consistent/recognized approach or process must be developed that incorporates site-specific, local conditions into the affordability analysis. For instance, NACWA members, as public agencies, depend on a full range of community rate-payers, from the most affluent to those well below the poverty line. The mix of these rate-payers is a local issue that is different from service area to service area. NACWA feels that consideration of such unique local conditions must be recognized as a key, controlling consideration in the assessment of a community's financial capability.

Recommendations for Immediate Enhancements

NACWA's specific recommendations for immediate enhancement during the current review of the *Guidance* are:

- Recognize in the *Guidance* that "assessment of a community's unique local conditions" should form a *primary basis* of evaluation for the economic capability assessment;
- Include other socio-economic indicators that may be used in the analysis;
- Acknowledge that affordability principles apply to the service area as well as significant political and demographic communities within the area;
- Acknowledge that trends and historical values - not only present values - of the socio-economic indicators should be considered in the analysis; and
- Recognize that states may conduct affordability analyses for communities under their jurisdiction, and these should be given primacy.

Future Considerations for Affordability and Implementation of All Clean Water Program Obligations

NACWA member agencies are assessing their ability to pay for necessary programs and improvements on a day-to-day basis. With the evolution of wet weather regulations in particular, many communities are faced with program decisions that may stress their financial capability. For many communities, wet weather program choices/decisions cross categorical lines (CSO, SSO, stormwater). Regulatory policies are not yet developed

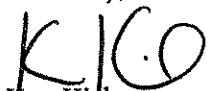
¹ For example, "when a permittee believes that there are unique circumstances that would affect the conclusion of this guidance, the permittee may submit documentation of its unique financial conditions to the appropriate EPA or State NPDES authorities for consideration" (*Guidance*, pg. 10). Similarly, EPA's March 1995, *Interim Economic Guidance for Water Quality Standards – Workbook* views local impacts as a consideration, though only after the scoring process is complete. While the discussion of these impacts (See Chapter 4) is quite good, they do not play a sufficiently central role in the assessment process.

that adequately address the interrelationship of these issues. To meet these needs NACWA is undertaking a more ambitious project to develop a holistic approach to such affordability and financial capability concerns.

In discussion with EPA staff, we were informed that this could be useful as EPA and the Environmental Financial Advisory Board (EFAB) continue to explore innovative, integrated approaches to meet 21st century needs in the financial capability arena. NACWA has attached its most recent draft/iteration of its work on this issue for your review.

NACWA looks forward to working with EPA as this process continues. Please contact me if you would like to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kirk". The signature is stylized and written in a cursive-like font.

Ken Kirk

Executive Director

cc: Jim Hanlon, EPA

Don Brady, EPA

ATTACHMENTS