



August 8, 2016

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Assistant Attorney General
U.S. DOJ- ENRD
P.O. Box 7611
Washington, DC 20044-7611

Submitted via email to pubcomment-ees.enrd@usdoj.gov

RE: *United States and State of Maryland v. Mayor and the City Council of Baltimore, Maryland*, Civil Action No. 1:02-CV-01524-JFM., D.J. Ref. No. 90-5-1-1-4402/1

The National Association of Clean Water Agencies (NACWA) is pleased to provide these comments in support of the Modified Consent Decree lodged on June 1, 2016 in *United States and State of Maryland v. Mayor and the City Council of Baltimore* (D. Md., Civ. No. 1:02-CV-01524-JFM). NACWA is a national advocacy organization working on behalf of the nation's publicly owned wastewater and stormwater utilities, with nearly 300 municipal member agencies nationwide including Baltimore. NACWA's members are true environmental leaders, working on the front lines every day to protect the environment and public health, improve water quality, and serve their communities.

NACWA commends Baltimore, the U.S. Department of Justice (DOJ), the U.S. Environmental Protection Agency (EPA), and the State of Maryland for negotiating a modified decree that allows Baltimore to prioritize projects based on environmental benefit that will eliminate more than 80 percent of remaining sanitary sewer overflows (SSOs) over the next five years.

Baltimore's original consent decree, entered in 2002, was one of the first in the country of its kind – an action aimed at the entire sewer system of a major metropolitan area. As work under the original decree progressed, and the parties gained a more detailed understanding of the City's sewer system, it became clear that the schedule was unrealistic and did not reflect an accurate estimate of the work that would be required. The modified consent decree builds on the extensive work already accomplished under the original decree, and provides for a system that will capably serve the City and residents, acknowledges the financial realities facing the ratepayers who ultimately fund the projects, and protects the environment for generations to come.

The modified decree employs a two-phased adaptive management approach. Phase I includes the Back River Headworks project to correct a 10-mile sewage backup created by the displacement of a huge sewer main leading into the wastewater treatment plant, along with 34 individual sewer cleaning and maintenance projects, and will be completed by January 1, 2021. Completion of Phase I will be followed by 18 months of flow monitoring, after which Baltimore will study the results and propose projects for Phase II. All projects under the modified consent decree must be complete by 2030.

NACWA strongly supports the adaptive management approach. The overarching goal of adaptive management is to allow a utility to learn while implementing the decree and course-correct based on lessons learned, changed circumstances or priorities, and/or new regulatory mandates that have arisen. The regulatory landscape continues to shift drastically and effective utility management requires the ability to adapt. Prioritization is not and should not be static. A rigid decree that sets an invariable course for an extended period of time is contrary to the objectives of the CWA and holds the prospect for imposing substantial undue costs. Adaptive management is critical to achieving the most beneficial water quality improvements at the lowest cost and is, therefore, in the best interest of the community being served and the environment.

NACWA strongly encourages the District Court to approve the proposed Modified Consent Decree as presented by the parties that negotiated it. Municipal wet weather consent decrees are complex agreements that take significant time, diligence and expertise to draft and implement. They are also very costly, resulting in significant investment of local ratepayer dollars. These agreements are painstakingly negotiated by federal and state government officials with knowledge in sewer overflow reduction, along with skilled local municipal representatives with detailed understanding of their unique sewer system and overflow issues as well as their community's specific financial capability and economic concerns.

Highly technical issues are tackled by the various government entities involved in consent decree negotiations, including complex engineering projects necessary to address overflow issues and the financial capability assessments required to evaluate implementation and timing of required overflow controls and infrastructure investments. The federal, state, and local experts involved in decree negotiations are best placed to address these challenging issues in the context of consent decree requirements. Federal district courts have routinely acknowledged and deferred to the expertise involved in the negotiation process when approving proposed decrees. Indeed, nearly 100 of NACWA's public utility members around the country are under some form of consent decree related to sewer

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overflows, the vast majority of which have been approved by courts without significant change from the proposed agreement as negotiated by federal, state, and local officials.

The proposed modification provides a rational and responsible path forward that will allow Baltimore to make financially appropriate investments to ensure that the community receives meaningful water quality improvements in return. NACWA strongly encourages its prompt approval by the court.

NACWA appreciates the opportunity to provide these comments on the proposed modification. If you have any questions about these comments or would like to discuss them further, please do not hesitate to contact me at awaters@nacwa.org or 202-833-9106.

Sincerely,



Amanda J. Waters
General Counsel

c: Dana Cooper, Chief of Legal and Regulatory Affairs, City of Baltimore Department of Public Works