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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

NACWA Comments on EJ 2020 Action Agenda Framework

June 11, 2015

Page 3 of 3

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 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