



Save the Sound[®]

Action for our region's environment.

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Andrew D. Sawyers, Director
Office of Wastewater Management
Water Infrastructure Division (MC4204M)
Environmental Protection Agency
1200 Pennsylvania Ave. NW
Washington, DC 20460

RE: Docket ID No. EPA-HQ-OW-2020-0426; FRL-8421-02-OW; Proposed 2022 Financial Capability Assessment for Clean Water Act Obligations

Save the Sound is a nonprofit organization representing over 4,200 member households and 10,000 activists in Connecticut and New York. Our mission is to protect and improve the land, air, and water of the entire Long Island Sound region. We use legal and scientific expertise and bring citizens together to achieve results that benefit our environment for current and future generations.

Dear Mr. Sawyers,

On behalf of Save the Sound and its members, I submit the following comments and concerns regarding the Environmental Protection Agency's (EPA) proposed 2022 Financial Capability Assessment (FCA) Guidance for Clean Water Act Obligations ("2022 FCA Guidance" or "Guidance"). Compliance with the Clean Water Act is urgent and, in many cases, long overdue.

Noncompliance with Clean Water Act obligations can have a devastating impact on the health and well-being of communities where the violations are ongoing. One common example is continuing discharges of raw sewage into local water bodies. In determining compliance schedules under enforcement actions, agencies look largely to rates as a critical funding source, but detrimentally assume that the cost should be borne equally by ratepayers regardless of their financial means or ability to pay. This, paired with limited or underutilized alternative sources of funding, results in delays in compliance that extend the burden of pollution in lower-income areas, often for time periods that span generations.

EPA's FCA model has left communities that are most impacted by environmental justice concerns bearing the burden of pollution for an unreasonable stretch of time—to the detriment of the environment and public health. EPA's proposed 2022 FCA Guidance is no different. Although it offers slight improvements in comparison to the proposed, but not finalized, 2020 FCA Guidance, the proposed 2022 FCA Guidance still allows harmful delays of the goals of the Clean Water Act, while also allowing inaction on the part of municipalities, when instead, it should be offering solutions to costly compliance obligations in ways that do not increase lower-income ratepayers' financial burden and that ensure prompt CWA compliance.

Save the Sound is concerned that EPA’s proposed 2022 FCA Guidance: (1) proposes CWA compliance schedules that apply broadly to all CWA obligations and uniformly to compliance tasks of varying sizes, and which allow for long periods of noncompliance, sometimes even up to 25 years, prolonging economic, environmental, and health issues that affect low-income residents; (2) has methods for assessing a community’s financial ability to pay higher rates that fail to include a household-specific income-based rate structure; and (3) does not require municipalities to exhaust *all* the financing alternatives available to them before relying on low-income household financial capability to justify delaying CWA compliance. While the proposed 2022 Guidance addresses some environmental justice concerns that the proposed 2020 Guidance overlooked (discussed below), its failures still prolong environmental and public health issues in low-income communities.

I. The Guidance Applies Broadly To All CWA Obligations And Allows for CWA Compliance Schedules To Span Decades, and, in Certain Situations, Even Be Further Extended, Thereby Prolonging Noncompliance and the Economic, Environmental, and Health Issues That Disproportionally Affect Low-Income Residents.

The Guidance explicitly acknowledges that a longer CWA compliance schedule is not the best solution for addressing economic, environmental, and health concerns of low-income residents. However, the Guidance proposes just that—long compliance schedules that allow for CWA noncompliance for periods of time stretching ten years and longer, with some suggested schedules spanning up to twenty-five years. The Guidance refers to these proposed compliance schedules as “benchmarks.”

In comparison to the proposed 2020 Guidance, the proposed 2022 Guidance offers virtually no changes to these benchmarks. The proposed 2022 Guidance sought to allow for communities with “medium” FCA impacts to qualify for CWA compliance schedules of up to 15 years, and “high” impact communities to qualify for compliance schedules up to 20 years, or for unusually high impacts, 25 years (a change from 25 years or the “useful life” timeline allowed in the 2020 Guidance). These proposed scheduling benchmarks are wholly inconsequential to having a positive impact on low-income communities and the environmental harm, public health, and environmental justice issues that exist there.

Problematically, these benchmarks can be applied uniformly to compliance tasks of varying size and complexity, and regardless of the past delinquency of the municipality. Further, the lack of consideration given to the scale of the ongoing environmental harm highlights the impracticability and ineffectiveness of implementing these benchmarks.

Under the Guidance, municipalities can ask for and receive extensions of time to comply that stretch beyond their already lengthy compliance schedules. According to the Guidance, so long as EPA reviews a municipality’s support for requesting an extension and agrees that the extension is appropriate, projects can be delayed in accordance with the unique needs of the municipality.

The Guidance does recommend that municipalities prioritize CWA compliance projects within the overall lengthy compliance schedule based on the urgency and severity of compliance issues. It also recommends that environmental and public health topics, such as discharges occurring in sensitive areas, use impairment, and environmental justice concerns, are evaluated before municipalities determine the sequencing and priority of projects. However, these considerations are merely suggested. And, the Guidance applies broadly to all CWA obligations, including water quality standards. A case-by-case evaluation of how long compliance has been neglected, the scale of the needed investment, the size of the environmental harm, and the resulting public health and environmental health risks, should be required to be assessed when municipalities and EPA are proposing and evaluating CWA compliance extension requests.

If compliance timelines are allowed to be extended, municipalities will bear costs that extend far beyond rate increases. While it is easy to calculate a rate increase and analyze its potential financial impact on a ratepayer's budget, it is understandably challenging to calculate the public health and environmental costs that historically low-income communities face when CWA noncompliance is ongoing. It is nearly impossible to calculate the cost of increased healthcare needs in communities where CWA compliance projects are delayed. It is equally difficult to quantify the costs associated with needing to drive further away from home to sustainance fish. These examples—just two of many—highlight how extending CWA compliance schedules will result in complex harms within communities.

II. The Methods for Assessing a Community's Financial Ability to Pay Fail To Consider Household-Specific Income, Thereby Disproportionally Affecting Low-Income Households.

The Guidance proposes two metrics for evaluating the financial impact of CWA compliance costs on households. These metrics aim to assess the severity and prevalence of poverty in a community's service area but base their analyses on the lowest-earning 20% of a community, rather than on household-specific income. A large disparity in what a household can afford understandably exists even within the lowest earning 20% of a given community. The Guidance uses this calculation of financial impact to determine permissible compliance schedules and extensions—where there is a high level of financial impact on the lowest-earning households, longer timelines are permitted. Crucially, the Guidance fails to address the regressive impact that rate increases would have on the lowest earning communities in areas where there are vast income inequalities. For example, many municipalities have significant wealth disparities, wherein some households have the ability to pay higher rates, others do not—but by focusing solely on the lowest-earning 20% for the calculation of a reasonable uniform rate increase for all households, those wealthier households are not bearing a proportional burden of these costs.

Creating a household-specific income-based rate structure would allow CWA compliance costs to be equitably borne by all households, while also allowing problems to be addressed on a proactive schedule and in a geographically neutral way. Failing to include this kind of rate structure in the Guidance artificially constrains the financial capability of municipalities to afford to become CWA compliant.

It is encouraging that the proposed 2022 Guidance, unlike the 2020 proposal, recognizes that community-specific factors, such as age of infrastructure, housing type, and efficiency of water appliances, can disproportionately impact water usage and costs to low-income households. The 2022 FCA’s acknowledgement that communities that charge customers on a fixed rate structure, rather than based on volume of water usage, could also have unintended but inequitable impacts in low-income communities, is also a step in the right direction.

However, the Guidance should, at the very least, require an evaluation of financial capability, using an income-based rate structure to determine compliance schedules, regardless of whether a municipality implements that rate structure. This would allow for faster compliance timelines, while encouraging the municipality to fully evaluate the implementation of such a rate structure. Alternatively, to offer stronger protections for low-income households while still encouraging swift CWA compliance, EPA could require an evaluation of the feasibility of an income-based rate structure within individual municipalities and require a showing of the inability to implement the rate structure if it is not used.

III. Proposed Financial Alternatives Analysis Does Not, but Should, Require Municipalities To Exhaust All Financing Alternatives Available Before Relying on Low-Income Household Financial Capability to Justify Delaying CWA Compliance.

Save the Sound supports the proposed 2022 Guidance’s recommendation to use a variety of financial tools to address CWA compliance costs, which will remove the financial burden from low-income customers and achieve shorter compliance schedules. Rather than relying solely on consumer rate increases, the Guidance suggests that municipalities use variable rate structures, customer assistance programs, a reevaluation of various metrics (such as costs for drinking water, asset management, storm management, and the evaluation of maximum bill impact relative to household size), and applications for grants or subsidies from the Clean Water State Revolving Fund (CWSRF) to increase total spending on compliance. The Guidance’s inclusion of specific federal funding initiatives and programs, such as the Bipartisan Infrastructure Law (BIL), American Rescue Plan Act (ARPA), State Revolving Loan Funds (SRFs), Water Infrastructure Finance and Innovation Act (WIFIA), was promising.

However, the Guidance only requires that a municipality “demonstrates that it has taken all feasible steps to reduce or mitigate the financial impact of water service costs on the lowest quintile households and to achieve compliance as expeditiously as possible.” This standard is vague, subjective, and offers no metrics to identify or evaluate the steps a municipality has taken to acquire alternative funding. Much stronger language—such as requiring municipalities to exhaust *all* the financing alternatives available to them before relying on low-income household financial capability to justify delaying Clean Water Act compliance—should be included instead.

Further, Appendix C to the proposed 2022 Guidance, titled, “Financing and Funding Considerations for Financial Alternatives Analysis,” includes a checklist that provides municipalities with financial questions and topics to consider when deciding how the municipality will fund CWA compliance projects. Among other suggestions, the checklist encourages municipalities to consider “ratepayer support options for lower income residential

customers,” and lists examples of funding and financing sources available for municipalities to apply for. The Guidance suggests that communities that demonstrate a “medium” or “high” Initial Lowest Quintile Poverty Indicator (“LQPI”) Score (used to benchmark the severity and prevalence of poverty within the community’s service area) should complete the checklist and provide the results—and additional steps the municipality proposes to take to minimize the financial burden on residential ratepayers—in its FCA Guidance. However, municipalities should be required, not merely encouraged, to answer each part of the checklist and to make their answers available to the public.

IV. The Proposed Guidance’s Impact on Long Island Sound Communities

Finally, the proposed 2022 FCA Guidance will impact Long Island Sound communities. The region suffers from poorly maintained and outdated sewage infrastructure and, consequently, sewage pollution in the Sound and its tributaries. Many municipalities and water pollution control authorities have sought extensive delays to Clean Water Act compliance, extending this burden of pollution across generations.

For example, in 2020, the Metropolitan District Commission (MDC), located in the greater Hartford area of Connecticut, proposed a 29-year extension to its Long-Term Control Plan (“LTCP”) compliance schedule, citing affordability. Yet, the MDC’s sewer collection system discharges millions of gallons of raw sewage from combined sewer overflows each year, posing significant threats to the environmental justice communities within its watershed. DEEP recently accepted a short-term project list that is scheduled to be implemented through 2029, thereby leaving the ultimate end date of the entire LTCP unknown. Further illustrating the relevancy of this Guidance, several member towns are economically diverse, with households at opposite ends of the spectrum. The proposed 2022 Guidance, like the proposed 2020 Guidance, still fails to include a household-specific income-based rate structure, which would help ease the financial burden of low-income households while still allowing entire communities to take timely steps towards CWA compliance. And, as currently written, the Guidance allows for drawn out compliance schedules, which keep systemic environmental harms and injustices in place.

Similarly, New York City sewage treatment plants are continuing to discharge hundreds of billions of gallons of combined sewer overflows into New York City waterways, including Long Island Sound, causing them to fail to meet water quality standards. The current round of Long-Term Control Plans rely on incomplete treatment with chlorine, and there is no date set at which water quality standards would actually be achieved.

V. Conclusion

Overall, the proposed 2022 Guidance addresses some environmental justice topics that the proposed 2020 Guidance overlooked. We understand that certain compliance projects require significant expenditures, that most municipalities are likely not trying to outright avoid CWA compliance, and that there may be barriers to accessing financial resources that have inhibited compliance so far. However, every available option for funding should be taken advantage of to

accelerate CWA compliance while avoiding increasing consumer rates, because the consequences of extending noncompliance in the communities that suffer from historic environmental injustices are severe and unacceptable. It is therefore imperative that revisions are made to the proposed 2022 Guidance to include a household-specific income-based rate structure, require the exhaustion of all financial alternatives before relying on low-income ratepayers, require shorter compliance schedules, and require (rather than merely suggest) that municipalities prioritize compliance issues based on their urgency and severity. Doing so would provide communities with the ability to both efficiently and equitably fund and address environmental, public health, and environmental justice issues in a geographically neutral way.

Thank you for consideration of these comments.

Respectfully submitted,

/s/ Madeline Collins

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