



January 18, 2022

Andrew Sawyers  
Director, Office of Wastewater Management  
U.S. Environmental Protection Agency  
Washington, DC 20460

Dear Mr. Sawyers,

The Association of Clean Water Administrators (ACWA) is the independent, nonpartisan, national organization of state and interstate (hereinafter “states”) water program directors, responsible for the daily implementation of the Clean Water Act’s (CWA) water quality programs. We appreciate the recent presentation and discussion that we had with you on implementation of the Bipartisan Infrastructure Law (BIL).

ACWA’s members appreciate the historic and transformational infrastructure funding provided by the BIL and believe this funding will help address many state infrastructure challenges. We strongly support increased funding for drinking water, wastewater and stormwater infrastructure that protects public health and the environment. During your presentation, you requested feedback and recommendations from the states on the forthcoming BIL implementation guidance. We offer the following recommendations for your consideration as you move forward clarifying the implementation details for this historic funding:

### **Flexibility**

As the agency develops implementation guidance it is essential that EPA provide implementation flexibility and allow for innovation so that BIL funding can be used to promote new opportunities to scale up environmental protection and improvements. The new funding should allow for innovation and implementation approaches that may have been previously hindered by requirements of other/historical funding programs.

States are also seeking flexibility in where these funds are prioritized and flexibility in the time to spend the funding. The implementation guidance should also give due consideration and credit to projects that provide benefits to downstream waters and communities and be recognized as benefits to an environmental justice community. Moreover, the states recommend that the guidance allows for flexibility in terms of how long they have to use the funding. Many of the projects targeting environmental justice communities can take longer to move forward, leverage, and complete. The states also specifically recommend the guidance provide flexibility in the use of the SRF CEC/PFAS dollars to

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collect samples, assess risk, and target “upstream” sources to support alternatives options to traditional hard/gray infrastructure investment.

## **Definitions**

We suggest that EPA avoid establishing a national definition of environmental justice, disadvantage, underserved or low-income communities. Most states already have existing environmental justice focused initiatives with their own definitions to support their efforts. Developing a new federal definition will likely create confusion and may make it difficult for states to integrate into their existing programs. However, if the agency decides to develop a national definition, it is essential that the definition be clear, easily implementable, and has been informed by further state feedback. The states also request that the guidance clearly define emerging contaminants.

## **Metrics**

The states need to better understand how EPA is going to measure success. In particular, the implementation guidance should include the universe of metrics that will be used to measure the success of these funding opportunities at assisting disadvantaged communities achieve water quality and public health benefits.

## **Directed Assistance**

Some states would like the implementation guidance to address how the agency will help states identify environmental justice, disadvantaged, underserved or low-income communities. Some states may need assistance to identify all these communities and what their community needs are. While other states would prefer that the agency identify specific, regional examples of environmental justice projects for the states to use as a benchmark as they work through directing funds to communities in need. The guidance should also address the types of technical assistance that the agency can provide to prospective applicants. There also may be value in looking at community compliance status to determine if new funds would reduce future violations and/or speed up a return to compliance.

## **Coordination Between SRFs, BIL and Other Federal Funding Programs**

The implementation guidance should clearly explain connection, coordination, and leveraging opportunities between the SRFs and other federal funding options (i.e., OSG, other programs touted to increase climate resilience, promote energy efficiencies). Additionally, the guidance should clearly articulate the non-federal match requirements for SRF and other funds included in the overall bill.

## **Guidance on Build America Buy America Requirements**

The states request EPA also quickly provide clear implementation guidance on the Build America, Buy America requirements included in the BIL. It is imperative that this guidance be prepared simultaneously so that confusion and uncertainty does not slow down the ability of states to move forward with critical infrastructure projects.

## **Support Sec. 106 Funding to Implement BIL Funding**

The states welcome the focus on injecting resources into the system to spur infrastructure development and repair. This money is certainly needed. However, the states also need increased resources to support states in meeting their obligations to the Clean Water Act (CWA). States are also being asked to provide support for lead service line testing and replacement initiatives and to support environmental justice priorities and screening initiatives. Much of the federal funding has focused on specific outcomes and projects without much attention to the crucial seasoned state staff that execute vital support and analytic functions.

Congress has acknowledged its support of administrative costs by providing U.S. EPA with such funding. For instance, in the recently enacted American Rescue Plan Act in Section 6002 on funding for pollution and disparate impacts of COVID-19 pandemic, Congress directed the EPA Administrator to reserve 2% or 5% for necessary administrative costs linked to specific subsections. In another example, in the FY21 appropriations under the State and Tribal Assistance Grants, Congress directs the EPA Administrator to report on the amounts and sources used to administer and provide oversight of these grant programs. States agree with Congress that it is important to acknowledge and support administrative needs and asks that it similarly consider funding for states who work most directly with communities to both develop proposals and seek their input when determining state priorities.

Thank you again for the opportunity to provide recommendations on this effort. Please contact ACWA's Executive Director Julia Anastasio at [janastasio@acwa-us.org](mailto:janastasio@acwa-us.org) or (202) 756-0600 with any questions regarding ACWA's comments or if you would like to have more detailed discussions about these recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Andrew J. Gavin". The signature is fluid and cursive, with the first name "Andrew" being the most prominent part.

Andrew Gavin  
ACWA President

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