

Summary of National Dialogue on Flexible Permitting and Affordability

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Affordability Dialogue Highlights

Several national groups representing local governments, in particular, the U.S. Conference of Mayors (USCM), have been encouraging EPA to adopt greater flexibility in promulgating regulations and permits under the Clean Water and Safe Drinking Water Acts.¹ USCM, along with the National League of Cities and the National Association of Counties, has launched an “affordability dialogue” with EPA to highlight the challenges that local governments face in trying to pay for increasing regulatory requirements. Representatives of several COG member jurisdictions participated in the first of these dialogue sessions on April 29th and they will have an opportunity to do so again on October 10th.

To-date, EPA has responded with several memos issued by its Office of Water and Office of Enforcement and Compliance Assurance that lay out general guidelines to EPA’s regional offices regarding integrated planning, integrated permitting and assessing local governments’ financial capacity to meet regulatory requirements. (See <http://cfpub.epa.gov/npdes/integratedplans.cfm> for more details.)

More recently, the USCM has developed draft legislation for amending the Clean Water Act (CWA) to address issues it believes that EPA will not address or cannot address under current CWA language. (See Attachment 3b. in the meeting materials.)

Summary of USCM Issues

This spring, USCM issued a policy brief explaining its issues with current EPA policy and its recommendations for how to address them. The Mayors’ main issue is with how EPA has to-date interpreted the affordability of its various permits and other legal measures on individual local governments. In previous guidance, EPA has suggested that costs for wastewater service and addressing combined sewer overflows should not exceed 2 percent of a jurisdiction’s median household income (MHI) level. However, USCM argues that a strict reliance on MHI is misleading and potentially burdensome for low-income residents. Its policy brief notes that a rate that is affordable for the average or higher-income residents of a community may not be affordable for someone whose income is below the average. USCM also argues that affordability should take a broader perspective and consider a community’s overall financial health and the impact of all taxes and fees on economic viability.

¹ COG’s Chesapeake Bay and Water Resources Policy Committee received an introductory briefing on these issues at its November 16, 2012, meeting from Richard Anderson, Senior Advisor to the Mayor’s Water Council at USCM. See https://www.mwcog.org/environment/committee/committee/documents.asp?COMMITTEE_ID=39.

The brief suggests a number of methods to take into account the effect of rates across the income distribution in a particular community. The memo also notes problems with and suggests alternatives to the financial screening tools EPA uses to evaluate a community's overall ability to pay.

The suggestions include:

- 1) EPA should assess ratepayer affordability by examining the income of water and sewer charges across the entire income distribution, and pay special attention to impacts on the lower end of the income spectrum within regulated communities.
- 2) EPA should include costs for providing drinking water and maintaining drinking water system infrastructure, not just wastewater and stormwater, in its affordability analysis.
- 3) In its affordability analysis and its permitting framework, EPA should consider the costs that local governments face in replacing and maintaining existing water, wastewater and stormwater infrastructure. In some cases, where deferred maintenance can impact the safety or reliability of these systems, infrastructure replacement may be a higher priority than meeting new regulatory mandates, according to USCM.
- 4) EPA should consider a fuller analysis of local governments' ability to add additional debt to finance capital costs associated with regulatory requirements, including the cost of unfunded pension and health care commitments to retirees.

Application of National Principles within the COG Region

It is important to note that one of the major concerns driving the national dialogue at this point, i.e. the cost of meeting regulatory requirements for mitigating combined sewer overflows, is only an issue for two of COG's members - the District of Columbia and the City of Alexandria. The major drivers of increased water-related fees in the COG region are mainly: (1) new MS4 permitting requirements for addressing legacy stormwater pollution, such as those based on the Chesapeake Bay TMDL; (2) meeting new wastewater and drinking water requirements; and (3) increasing investment in repair and replacement of existing water and sewer infrastructure. In addition, the majority of COG's members tend to have higher MHI levels and stronger overall financial status than many other communities nationwide.

However, the issues of income and impact disparities are also an issue in the region. And there are concerns in the region about the rate at which water quality infrastructure costs are rising and, in certain jurisdictions, concern about the impacts on lower-income residents. There also are concerns about implementation capacity independent of financial considerations, for instance, whether in-house stormwater program staff and outside resources such as engineering consultants can be mobilized quickly enough to meet ambitious permit schedules.