

March 3, 2021

Radhika Fox  
Acting Assistant Administrator for Water  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Mail Code 4101 M  
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**Re: Request to Withdraw Pre-Publication “2021 Financial Capability Assessment Guidance for Clean Water Act Obligations”**

Dear Acting Assistant Administrator Fox,

On January 13, 2021, EPA’s Office of Wastewater Management released a pre-publication version of the 2021 Financial Capability Assessment Guidance for Clean Water Act Obligations (“Pre-Publication Guidance”).<sup>1</sup> We understand that the Pre-Publication Guidance has not yet been published in the Federal Register, pursuant to the January 20, 2021 White House memorandum titled “Regulatory Freeze Pending Review.”<sup>2</sup>

The Pre-Publication Guidance is substantially the same as a draft version EPA published for comment in September 2020. Nearly one hundred national, regional, and local environmental groups and environmental justice groups jointly filed comments opposing that draft.<sup>3</sup> Others also wrote separately in opposition.

**On behalf of the 63 undersigned organizations and their millions of members across the country, we write now to ask you to withdraw the Pre-Publication Guidance.**

The Pre-Publication Guidance purports to address legitimate concerns about the affordability of water and sewer service for low-income households. Instead, it allows municipalities to continue for decades the discharge of raw sewage and other pollution in violation of Clean Water Act standards—or to weaken the standards themselves—specifically because a city has a significant population of low-income residents. This approach reinforces existing inequities in access to clean water and sanitation, in which health and environmental burdens fall disproportionately on communities of color and low-income communities.

During EPA’s years-long development of the draft, which was intended to revise or replace the Agency’s outdated 1997 Financial Capability Assessment guidance, it primarily solicited the opinions of regulated parties. That process produced a guidance that promotes the regulated parties’ interest in deferring or weakening regulatory obligations, rather than the people’s interest in having access to safe, clean water.

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<sup>1</sup> <https://www.epa.gov/waterfinancecenter/2021-financial-capability-assessment-clean-water-act-obligations>

<sup>2</sup> <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>

<sup>3</sup> Letter of 10/19/2020 from L. Levine, at al., to A. Sawyers, Re: Docket ID No. EPA–HQ–OW–2020–0426, [https://downloads.regulations.gov/EPA-HQ-OW-2020-0426-0037/attachment\\_1.pdf](https://downloads.regulations.gov/EPA-HQ-OW-2020-0426-0037/attachment_1.pdf).

We urge EPA to seek input, openly and comprehensively, from a much wider set of stakeholders—especially impacted environmental justice communities and EPA’s National Environmental Justice Advisory Committee—to inform the development of a new proposal.

A new guidance must be based on a fundamentally different premise than either the Pre-Publication Guidance or the pre-existing 1997 guidance it is intended to replace. It must be a driver for just and equitable clean water investments, including affordable wastewater service for low-income households, rather than an escape hatch from Clean Water Act compliance that perpetuates environmental injustice.

Thank you for your consideration of this request.

Sincerely,

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cc: Andrew Sawyers, Director, Office of Wastewater