

# Congress of the United States

Washington, DC 20515

September 3, 2020

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460

## **Docket ID No. EPA-HQ-OW-2020-0282**

Dear Administrator Wheeler,

As the U.S. Representatives of the Merrimack Valley in Massachusetts and New Hampshire, we respectfully offer our comments in response to the EPA's proposed State Formula Allocations for Sewer Overflow and Stormwater Reuse (Sec. 221) Grants.

The Section 221 grant program authorizes federal grant funding to States and municipalities for the planning, design, and construction of treatment works and other measures for combined sewer overflows, sanitary sewer overflows, or stormwater management.

As you know, combined sewer overflows (CSOs) are a product of combined sewer systems, which serve more than 800 communities across the nation. These systems are particularly common in the Northeast and Midwest, where they trigger harmful releases of raw sewage when precipitation exceeds manageable levels.

CSOs are an urgent challenge for communities along the Merrimack River, which supplies drinking water for nearly 600,000 people. In 2018, 800 million gallons of sewage and untreated stormwater were released into the river, which runs more than 100 miles from central New Hampshire, through northeastern Massachusetts, and then out to sea. The CSO discharges in Manchester and Lowell accounted for more than half of the volume.

With these facts in mind, we appreciate the opportunity to share our views of the EPA's proposed methodology for allocating Sec. 221 funding to states and territories.

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### (1) EXPEDITE CLEAN WATERSHEDS NEEDS SURVEY UPDATES

We fully agree with the EPA's proposal to give the greatest weight in the funding allocation methodology to data from the Clean Water Needs Survey (CWNS). It is the most comprehensive dataset for identifying wastewater infrastructure needs across the nation. Therefore, it is the best source for ensuring fair allocations of Sec. 221 funds.

However, the EPA should endeavor to make more timely updates to the CWNS. The most recent CWNS, issued in 2012, relies upon data collection that began in January 2008 – 12 years ago. However, 33 USC 1375 requires the EPA to make biennial estimates “of the cost of construction of all needed publicly owned treatment works” – including state level needs as well as a cumulative total for the entire nation. The availability of updated CWNS is critical to ensuring funds are put to the best use.

**Recommendation:** We urge EPA to meet the statutory requirements for more frequent updates to the CWNS in order to best allocate Sec. 221 grant funding.

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### (2) STRIKE THE TOTAL POPULATION FACTOR FROM THE FORMULA

The EPA proposes to include in its formula the total population of each state. This factor would account for 16.67 percent of the scoring criteria. This factor was proposed to be included, according to the *Federal Register* notice, because “higher populations generally have greater infrastructure needs.” While this may generally hold true, it is far too coarse a measure to be included in a carefully targeted funding methodology. Rather, the only *certain* conclusion that can be made by including such a factor is that it would skew grant allocations to the benefit of the most populous states.

The size of a state’s population has no direct bearing on the degree of need for federal aid to improve wastewater infrastructure. A more precise and fair method would include an estimate of the cost of wastewater improvement needs on a *per capita* basis. For example, with a population of 1.3 million and CWNS estimate for categories I-VI of nearly \$2 billion, the *per capita* cost in New Hampshire is in excess of \$1,500. Similarly, in Massachusetts, the *per capita* cost is nearly \$1,300. The combined need for Massachusetts and New Hampshire is \$10.3 billion. Conversely, Texas is among the most populous states, but its total need across categories I-VI (\$11.765B) yields a *per capita* cost of \$468. California’s *per capita* need is \$646. In our view, including total population in the final formula would be both unnecessary and unfair.

**Recommendation:** We urge the EPA to replace the total population with a metric that weighs *per capita* needs.

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### (3) PRIORITIZE AID FOR FINANCIALLY DISTRESSED COMMUNITIES

As you know, the EPA has previously established affordability factors to prevent “*undue economic hardship*” in demanding compliance with water quality standards. Additionally, Sec. 221 of the *Clean Water Act* expressly includes a requirement that financially distressed communities be prioritized for funding. Moreover, the U.S. House of Representatives recently passed legislation (H.R. 2) that would ease the financial burden of wastewater projects on financially distressed communities by increasing the federal cost share to 75 percent from 55 percent. This provision was adopted from a bill

that we introduced, the *Stop Sewage Overflow Act*. It was designed to target Sec. 221 grants to CSO communities which most need aid to comply with the *Clean Water Act*.

The Sec. 221 grant program presents an important opportunity to assist financially distressed communities in meeting water quality standards. It would be consistent with the underlying law, previous EPA practice, and recent Congressional action to prioritize these communities for Sec. 221 funds.

**Recommendation:** We urge the EPA to prioritize Sec. 221 grants to financially distressed communities.

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(4) ENSURE FULL TRANSPARENCY AND EASE OF ACCESS TO FORMULA DATA

We appreciate the EPA's citations of its data sources in the *Federal Register* notice. Transparency is crucial to maintaining confidence in the allocation of these limited resources. In order to achieve the greatest degree of accuracy and opportunity to correct any errors, we recommend that the EPA include on its public website, in one place, the full suite of data used to make proposed allocations. This should be done at least 30 days before the funds are released. Such transparency will permit public agencies the opportunity to inspect the information to ensure its precision and without needing to consult various sources across several websites. It will also afford sufficient time to request corrections to the data before the EPA allocates the funds.

**Recommendation:** We urge the EPA to publish on its public website, in one place, the complete set of data it uses to make estimated allocations of Sec. 221 funds.

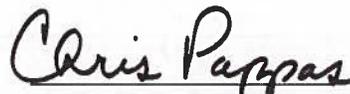
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Thank you for your consideration of our views. We ask that you give them full and fair consideration as the EPA finalizes its methodology for the State Formula Allocations for Sewer Overflow and Stormwater Reuse Grants.

Sincerely,



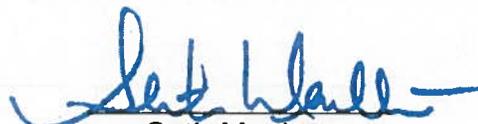
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