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January 18, 2023

**VIA EMAIL ONLY**

Division of Environmental & Financial Assistance  
Ohio EPA  
defamail@epa.ohio.gov  
P.O. Box 1049  
Columbus, OH 43216-1049

**Re: Comments on Ohio EPA's Water Pollution Control Loan Fund Program Year 2023 Draft Program Management Plan**

Dear Division of Environmental & Financial Assistance Team:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to provide feedback and comments on Ohio EPA's Water Pollution Control Loan Fund Program Year 2023 Draft Program Management Plan ("Draft Plan"). AOMWA is a not-for-profit trade association that represents the interests of public wastewater agencies across the state of Ohio, serving more than 4 million Ohioans and successfully treating more than 320 billion gallons of wastewater each year.<sup>1</sup>

AOMWA appreciates DEFA's efforts to administer a historic level of funding to Ohio's communities. The sheer volume of funding highlights the importance of stewarding those funds to projects and communities to advance water quality objectives for Ohioans. Unfortunately, the historic funding comes at a time of unprecedented need. To provide just two examples, AOMWA member the City of Dayton has indicated that it faces capital costs for water and sewer programs at a level higher than the total capital needs of both programs for the past 25 years combined. Dayton has nominated projects that cost over \$140 million for 2023 alone. Meanwhile, AOMWA member the Northeast Ohio Regional Sewer District ("NEORS") currently faces \$2.2 billion in wastewater needs and \$1.1 billion in stormwater needs through 2042. Other AOMWA members face similarly critical infrastructure needs. Given the heightened needs at large wastewater treatment utilities, AOMWA believes that Ohio EPA should expand funding for these utilities.

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<sup>1</sup> AOMWA members include cities of Akron, Avon Lake, Bowling Green, Canton, Columbus, Dayton, Euclid, Fairfield, Hamilton, Lancaster, Lima, Marysville, Middletown, Newark, Portsmouth, Solon, Springfield, Wadsworth, Warren, and Butler County, Greene County, Hamilton County, Summit County, the Metropolitan Sewer District of Greater Cincinnati, the Northeast Ohio Regional Sewer District, and the Tri-Cities Regional Wastewater Authority.

AOMWA has enclosed our prior June 3, 2022 comments regarding the administration of federal infrastructure funding, and requests that the Agency consider the comments stated in that letter. We write again to highlight and emphasize the following points:

1. AOMWA supports Ohio EPA's efforts to align funding with program priorities, and requests that the Agency consider allocating more funding toward projects that have the greatest opportunity for environmental benefit. Ohio EPA recently acknowledged that water quality management is most effective when efforts focus on the largest sources of loading.<sup>2</sup> Consistent with this approach, Ohio EPA has identified in the Draft Plan that its primary long-term goal is to "[a]ssist a broad range of water quality improvement actions that help fulfill the objectives of the Clean Water Act." *Draft Plan* at 8. By focusing on those projects that provide the State of Ohio with the greatest "bang for the buck," Ohio EPA would best serve Ohio's ambitious water quality goals.

AOMWA believes that the currently planned allotments of principal forgiveness loans should be revised to prioritize those projects that are expected to lead to the greatest environmental benefit. As the Draft Plan acknowledges, principal forgiveness functions "much like a grant,"<sup>3</sup> and unfortunately, the "demand for this money far outweighs availability of funds."<sup>4</sup> Currently, the Draft Plan notes that large community wastewater infrastructure will receive merely \$21.2 million of the total \$75 million of available principal forgiveness. See pg. J-4 (PDF pg. 94). By providing greater funding to large community wastewater projects, Ohio EPA would improve its chances at obtaining the largest environmental benefit.

To be clear, AOMWA appreciates Ohio EPA's elimination of a population requirement of less than 10,000 people to become eligible for disadvantaged community funding. That revision is a significant step forward. However, to obtain the greatest benefits for Ohio's watersheds, AOMWA believes that the Draft Plan should be revised to provide significantly greater funding for those large community wastewater infrastructure projects.

2. Similarly, AOMWA requests that Ohio EPA allow multiple principal forgiveness awards to be provided to a single entity based on a consideration of anticipated environmental benefits. Ohio's public wastewater treatment entities face an unprecedented need for principal forgiveness funding. As discussed above, Ohio EPA agrees that the principal forgiveness funds available do not meet the existing needs. AOMWA believes that Ohio EPA should invest in projects that lead to the greatest likelihood of an environmental benefit. By imposing a cap of \$4 million principal forgiveness per project and then allowing only one award per entity,<sup>5</sup> the greatest needs at the largest utilities will be left unmet. In this way, these funding limits are expected to interfere with the Agency's primary goal.
3. Ohio EPA could expand funding for the dischargers that are most critical to improve water quality in yet another manner. Although the Draft plan indicates that large community wastewater infrastructure is only slated to receive \$21.2 million, the Draft Plan states that nearly \$600 million of total pollution control funds are available this year alone. AOMWA

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<sup>2</sup> *Ohio EPA, Maumee Watershed Nutrient Draft Total Maximum Daily Load* (Dec. 30, 2022) (explaining that smallest facilities contribute lowest fraction of nutrient loading, and therefore will not be required to further reduce their nutrient concentrations).

<sup>3</sup> Pg. 13

<sup>4</sup> Pg. 17.

<sup>5</sup> Pg. App'x j-2.

is not aware of any provision in the Clean Water Act or other federal or state laws or regulations that would prohibit Ohio EPA from providing principal forgiveness funding from the larger pool of funds. AOMWA appreciates that Ohio EPA will want to maintain a strong fund for a variety of reasons, but AOMWA requests that the Agency consider investing a significant portion of those resources to address the historically urgent needs.

4. We request that Ohio EPA adjust its affordability criteria to address affordability concerns when disadvantaged neighborhoods fall within larger communities that do not qualify as disadvantaged. U.S. EPA's recent memo entitled *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law Memorandum* ("U.S. EPA Implementation Memo") states that "EPA expects states to evaluate their affordability criteria to determine whether it can be crafted broadly to include neighborhoods with affordability concerns within larger communities." *Id.* at 26. Smaller neighborhoods within a large urban community are at risk to not qualify for funding under Ohio's affordability criteria when the criteria are averaged across the entire community. Ohio EPA previously indicated that it may consider census tract data to address such concerns, and AOMWA supports this or similar approaches. However, it does not appear that this treatment is incorporated into the Draft Plan.

AOMWA requests clarification on Ohio EPA's intended approach to this issue. The Draft PMP states at pg. J-6 that generally Ohio EPA will evaluate whether a county is disadvantaged using county-level data. It appears that the Agency intends to evaluate sewer districts based on the composition of the entire sewer district's service area as well. That is, it does not appear that Ohio EPA intends to provide principal forgiveness funding to neighborhoods with affordability concerns within larger communities. The Draft PMP creates one exception: "In those few cases (like Northwestern Water and Sewer District) where individual municipalities are part of a sewer district but are still responsible for paying for their own wastewater systems, these communities will be evaluated like other incorporated areas." It appears "these communities" refers to the municipalities paying for their own systems, but AOMWA requests clarification. AOMWA believes Ohio EPA should continue to apply affordability criteria to a service area. In addition, when a disadvantaged neighborhood or subsection of a community is found within a larger community that is not disadvantaged, Ohio EPA should expand eligibility for principal forgiveness funding by also allowing funds to be provided to the more localized area within a large municipality, county, or sewer district.

5. Ohio EPA should consider that a disadvantaged community may be unable to demonstrate the capability of repaying a principal forgiveness loan, which AOMWA understands could make them ineligible to apply for such loans. According to the U.S. EPA Implementation Memo, states have flexibility to set repayment terms for IIJA funding. *Id.* at 2. To the extent possible, Ohio EPA should relax the repayment demonstration requirement so that communities are not prevented access to principal forgiveness funds simply because they cannot demonstrate an ability to repay a principal forgiveness loan. Similarly, the absence of a distinct sewer fee should not count against an applicant that is only planning to accept principal forgiveness funds. The presence or absence of a fee should not affect the scoring of such a project and its benefits.
6. AOMWA fully supports Ohio EPA's acknowledgement that stormwater projects are eligible for IIJA funding. App'x I.

AOMWA appreciates Ohio EPA's consideration of these comments as it continues to plan on the administration of WPCLF funding. Should you have any questions, please contact Rees Alexander at [rees.alexander@squirepb.com](mailto:rees.alexander@squirepb.com) or (614) 365-2798. Thank you again for your attention to and consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Frank P. Greenland".

Frank Greenland, P.E.  
President, AOMWA

Enclosure: 6/3/22 AOMWA Comment Letter

cc: (via email)  
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June 3, 2022

**VIA EMAIL ONLY**

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**Re: Comments on Ohio EPA's Updates Regarding Funding Implementation Under the Infrastructure Investment and Jobs Act**

Dear Infrastructure Funding Team:

The Association of Ohio Metropolitan Wastewater Agencies ("AOMWA") appreciates the opportunity to provide feedback and comments on Ohio EPA's updates regarding funding implementation under the Infrastructure Investment and Jobs Act ("IIJA"). AOMWA is a not-for-profit trade association that represents the interests of public wastewater agencies across the state of Ohio, serving more than 4 million Ohioans and successfully treating more than 320 billion gallons of wastewater each year.<sup>1</sup>

AOMWA wishes to provide feedback as Ohio EPA prepares to modify the Water Pollution Control Loan Fund ("WPCLF") affordability criteria and addresses other IIJA implementation issues. AOMWA also writes to express support for the separate comments set forth in the City of Dayton's May 23, 2022 comment letter. AOMWA looks forward to engaging in further discussions with Ohio EPA regarding these issues and submits the following preliminary comments:

1. AOMWA fully supports Ohio EPA's plan to eliminate its strict population requirements that exclude populations over 10,000 under the affordability criteria under the Clean Water State Revolving Fund ("CWSRF"). Under current Ohio practice, a community must have a population of less than 10,000 to meet Ohio's affordability criteria. Low limits such as this one serve to exclude larger municipalities that may otherwise meet the state's affordability criterion. As an example, in the City of Dayton's comment letter, it notes that despite otherwise qualifying as a disadvantaged community, the City has been excluded

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<sup>1</sup> AOMWA members include cities of Akron, Avon Lake, Bowling Green, Canton, Columbus, Dayton, Euclid, Fairfield, Hamilton, Lancaster, Lima, Marysville, Middletown, Newark, Portsmouth, Solon, Springfield, Wadsworth, Warren, and Butler County, Greene County, Hamilton County, Summit County, the Metropolitan Sewer District of Greater Cincinnati, the Northeast Ohio Regional Sewer District, and the Tri-Cities Regional Wastewater Authority.

from funding due to the population cutoff (i.e., 10,000) adopted in previous affordability criteria.

The definition of municipalities meeting affordability criteria is significant because funding under the CWSRF mandates that 49% of funds provided through the CWSRF General Supplemental Funding must be provided as grants and forgivable loans to the following assistance recipients or project types:

- **Municipalities that meet the state’s affordability criteria.**
- Municipalities that do not meet the state’s affordability criteria but seek additional subsidization to benefit individual ratepayers in the residential user rate class.
- Entities that implement a process, material, technique, or technology that addresses water or energy efficiency goals; mitigates stormwater runoff; or encourages sustainable project planning, design, and construction.

U.S. EPA, Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law Memorandum 3 (“U.S. EPA Implementation Memo”) (emphasis added). Accordingly, municipalities that meet the state’s affordability criteria or otherwise qualify for one of these three criteria are eligible for a significantly greater portion of funds than remaining applicants. Given the large number of funds available and the pressing need for these funds,<sup>2</sup> the time is ripe for a rigorous evaluation of Ohio’s affordability criteria.

AOMWA supports Ohio EPA’s intent to eliminate the 10,000 population maximum with respect to the CWSRF. Consistent with Ohio EPA’s currently-planned approach, U.S. EPA agreed with AOMWA’s position on this issue, noting that one example of affordability criteria within affordability and disadvantaged community definitions that can be a “barrier” includes “[d]efinitions based solely on population or definitions that include population as a determining factor.” *U.S. EPA Implementation Memo* at 40. U.S. EPA also “strongly encourage[d] states to amend their affordability and disadvantaged community definitions if they currently utilize any of these three criteria [including the strict population cutoff.]” *Id.* Ohio’s current practice is this type of problematic state policy because it operates as a gatekeeping requirement and determines affordability based solely on population.

In addition, a population cutoff should not be used in any manner to treat citizens of urban municipalities with greater than 10,000 population differently than more rural citizens. To use a strict population requirement in any manner would likely violate state and federal law, including the Equal Protection Clause of the Fourteenth Amendment.<sup>3</sup> Consistent with the U.S. EPA Implementation Memo, affordability “criteria should capture both urban and rural disadvantaged communities[,]” and should not function to deprive low-income Ohioans of funding to address human health issues simply because they reside in a relatively large urban community. *U.S. EPA Implementation Memo* at 4.

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<sup>2</sup> The City of Dayton’s comments note that it faces capital costs for water and sewer programs at a “level higher than the total capital needs of both programs for the past 25 years combined.” Dayton 5/23/22 Cmts. at 11.

<sup>3</sup> AOMWA also supports eliminating this 10,000 population cutoff under the Drinking Water State Revolving Fund for all types of projects. Low-income Ohioans in large urban areas should be eligible for funding in the same manner as their rural counterparts.

Ohio also appears to be alone in its prior use of a 10,000 population maximum, as AOMWA's review of several other U.S. EPA Region 5 states found no other examples with a strict requirement based solely on population in the CWSRF programs. Additionally, the City of Dayton notes in its comments that it independently completed a survey of states surrounding Ohio and found that no states currently have population caps in their water/wastewater affordability criteria. *Dayton Ltr.* at 14.<sup>4</sup>

2. We request that Ohio EPA adjust its affordability criteria to address affordability concerns for neighborhoods that fall within larger communities. Additionally, "EPA expects states to evaluate their affordability criteria to determine whether it can be crafted broadly to include neighborhoods with affordability concerns within larger communities." *Id.* at 26. Smaller neighborhoods within a large urban community are at risk to not qualify for funding under Ohio's affordability criteria when the criteria are averaged across the entire community. Ohio EPA has indicated that it may consider census tract data to address such concerns, and AOMWA supports this or similar approaches. AOMWA believes Ohio EPA should not limit its evaluation of the affordability criteria to a service area as a whole but should instead focus on sections of the service area and allow funds to be provided to smaller subsets of large municipalities.
3. AOMWA would like to request that Ohio EPA engage in further discussions with stakeholders and interested parties regarding the affordability criteria it has selected, including the poverty rate criteria and the particular metrics selected within each criterion. These criteria and metrics may serve as a barrier to funding for certain communities and modifications would serve to allow more communities in need qualify for funding.
4. Ohio EPA should provide flexibility in allowing cooperative agreements between municipalities to avoid excluding funding opportunities. For example, some larger municipalities may have unique ownership agreements with smaller municipalities, i.e., the smaller municipalities are served by those arrangements. It is AOMWA's understanding that, if the smaller municipality does not actually own the system, it may not be eligible to receive grants or principal forgiveness funds, even if it qualifies for such funds under the affordability criteria.<sup>5</sup> Based on the numerous inter-municipal arrangements that exist which could give rise to such concerns, and the IJA's goal to distribute funds to as many entities as possible, AOMWA recommends providing additional flexibility to ensure that municipalities in a cooperative agreement are not excluded from funding opportunities.
5. Similarly, current SRF programs do not allow eligible entities to accept funding and/or perform project responsibility on behalf of other SRF-eligible entities. However, some disadvantaged communities lack the resources and capacity to undertake the technical, financial, and administrative responsibilities related to a project, and this can create a barrier for such communities to receive SRF funding. Therefore, Ohio EPA should allow entities to apply for SRF principal forgiveness and manage projects on behalf of other eligible disadvantaged entities.

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<sup>4</sup> Collectively, AOMWA and Dayton reviewed the programs in Indiana, Illinois, Kentucky, Michigan, Minnesota and Pennsylvania.

<sup>5</sup> A more nuanced example of this concern stems from the drinking water sector. AOMWA understands that funding for drinking water is tied to a Public Water System ("PWS") ID. AOMWA supports increased flexibility under the SRF programs that allows funding to assist truly disadvantaged populations regardless of any unconventional inter-municipal arrangements.

6. Ohio EPA should consider that a disadvantaged community may be unable to demonstrate the capability of repaying a principal forgiveness loan, which AOMWA understands could make them ineligible to apply for such loans. According to the U.S. EPA Implementation Memo, states have flexibility to set repayment terms for IIJA funding. *Id.* at 2. To the extent possible, Ohio EPA should relax the repayment demonstration requirement so that communities are not prevented access to principal forgiveness funds simply because they cannot demonstrate an ability to repay a principal forgiveness loan.
7. AOMWA seeks clarification on whether Ohio EPA will impose maximum award caps for eligible entities receiving grants or principal forgiveness loans with IIJA funding. As with the population cutoff, a low cap on funding for principal forgiveness may effectively treat large urban areas differently than smaller more rural communities, and we therefore ask that Ohio EPA take a careful look at this issue and offer opportunities for stakeholder engagement to ensure that award caps do not function to preclude equal opportunities for funding for large municipal corporations and other applicants. We request the opportunity to discuss this issue further with Ohio EPA in the coming weeks. If there are maximum award caps, they should be flexible and fairly distributed after considering an entity's size and community impact.
8. AOMWA fully supports Ohio EPA's acknowledgement that stormwater projects are eligible for IIJA funding.

AOMWA appreciates Ohio EPA's consideration of these comments as it continues to plan implementation of IIJA funding. Should you have any questions, please contact Rees Alexander at [rees.alexander@squirepb.com](mailto:rees.alexander@squirepb.com) or (614) 365-2798. Thank you again for your attention to and consideration of these comments.

Sincerely,



John G. Newsome, P.E.  
President, AOMWA

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