

completion of the environmental review.<sup>1</sup>

### Schedule for Environmental Review

Issuance of EA July 21, 2023

90-day Federal Authorization Decision

Deadline<sup>2</sup> October 19, 2023

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

### Project Description

The Wisconsin Reliability Project would consist of the following facilities:

- installation of two new 3,750 horsepower (hp) Dual Drive Technologies, Ltd.<sup>TM</sup> (dual-drive)<sup>3</sup> compressor units, removal of five existing compressor units, and uprate of one existing unit at the existing Kewaskum Compressor Station in Sheboygan County, Wisconsin;
- installation of two new 3,750 hp dual-drive compressor units, removal of one existing compressor unit, installation of an electric substation, and upsizing of station inlet and discharge piping at the existing Weyauwega Compressor Station in Waupaca County, Wisconsin;
- replacement of approximately 48 miles of existing, 14-inch-diameter and 22-inch-diameter Line 301 with 30-inch-diameter and 36-inch-diameter pipeline, and existing 24-inch-diameter Line 226 with 30-inch-diameter pipeline in the counties of Washington, Waukesha, Waupaca, Outagamie, and Winnebago counties Wisconsin, as well as Mc Henry County, Illinois;
- expansion of the existing Lena, Merrill, Oshkosh, South Wausau, Stevens Point, and Two Rivers meter stations to accommodate deliveries of incremental capacity in the counties of Oconto, Lincoln, Winnebago, Marathon, Portage, and Manitowoc, Wisconsin; and
- other minor appurtenant facilities.

The general location of the Project facilities is shown in appendix 1.<sup>4</sup>

Construction of the proposed facilities would disturb about 1,044.3 acres of land for the aboveground facilities upgrades and pipeline modifications. Following construction, ANR would maintain about 466.7 acres for permanent operation of the Project's pipeline facilities and 36.4 acres for operation of the aboveground facilities; the remaining acreage would be restored and revert to former uses. A majority of the proposed pipeline route parallels existing pipeline, utility, or road rights-of-way, or would be installed within the same footprint of the existing pipe segment to be replaced.

### Background

On July 8, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Planned Wisconsin Reliability Project and Notice of Public Scoping Session* (Notice of Scoping). The Notice of Scoping was issued during the pre-filing review of the Project in Docket No. PF22-5-000 and was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; Native American tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received comments from Washington County, National Park Service, U.S. Environmental Protection Agency, and several landowners. The primary issues raised by the commenters were concerns with construction impacts, wetland and wildlife, air quality, and land use. All substantive comments will be addressed in the EA.

Wisconsin Department of Natural Resources, Wisconsin Department of Agriculture, U.S. Environmental Protection Agency, and U.S. Army Corps of Engineers are cooperating agencies in the preparation of the EA.

### Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in

specific dockets, the Commission offers a free service called eSubscription. This service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to <https://www.ferc.gov/ferc-online/overview> to register for eSubscription.

Additional information about the Project is available from the Commission's Office of External Affairs at (866) 208-FERC or on the FERC website ([www.ferc.gov](http://www.ferc.gov)). Using the "eLibrary" link, select "General Search" from the eLibrary menu, enter the selected date range and "Docket Number" excluding the last three digits (*i.e.*, CP23-15), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208-3676, TTY (202) 502-8659, or at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov). The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: January 30, 2023.

**Kimberly D. Bose,**  
Secretary.

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## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OW-2020-0426; FRL-8421.1-01-OW]

### Final Updated Clean Water Act Financial Capability Assessment Guidance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** When municipal discharges cause violations of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) sets a schedule for the municipality to address them as soon as possible. EPA considers factors such as public health, environmental protection, and a community's financial capability when developing schedules to implement the compliance measures. The updated Clean Water Act Financial Capability Assessment Guidance (FCA Guidance) may be used by municipalities when making certain water quality decisions and when developing or revising plans to dramatically reduce sewer overflows. The FCA Guidance describes the financial information and formulas the Agency intends to use to assess the financial resources a community has

<sup>1</sup> 40 CFR 1501.10 (2020)

<sup>2</sup> The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

<sup>3</sup> Dual Drive Technologies, Ltd.<sup>TM</sup> units are redundant prime mover systems comprised of a combination electric motor connected to an engine for powering a gas compressor. These units can switch between electricity and natural gas in the event of an abnormal operating event (*e.g.*, power outage) to provide enhanced system reliability and maintain customer commitments.

<sup>4</sup> The appendices referenced in this notice will not appear in the **Federal Register**. Copies of the appendices were sent to all those receiving this notice in the mail and are available at [www.ferc.gov](http://www.ferc.gov) using the link called "eLibrary." For instructions on connecting to eLibrary, refer to the last page of this notice. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll free, (866) 208-3676 or TTY (202) 502-8659.

available to implement controls to meet the requirements of the CWA. It also provides transparent benchmarks for negotiating schedules to put those controls in place and for states and authorized tribes to assess potential changes to water quality standards. This guidance also helps ensure national consistency in CWA implementation. The FCA Guidance replaces EPA's 1997 Combined Sewer Overflows—Guidance for Financial Capability Assessment and Schedule Development (1997 FCA Guidance) to evaluate a community's capability to fund CWA control measures in both the permitting and enforcement context. Additionally, Section III of the FCA Guidance is intended to assist states and authorized tribes in the consideration of economic impacts to public entities for supporting revisions to designated uses, water quality standard (WQS) variances, and antidegradation reviews for high quality waters. The FCA Guidance reflects EPA's consideration of public comments received in response to its February 23, 2022 **Federal Register** publication. The contents of this guidance document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide recommendations to the public regarding existing requirements under the law or agency policies.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:**

- I. Background and Use of the FCA Guidance
- II. Overview of the Updated FCA Guidance
- III. Public Comments Received and Changes from the February 2022 Proposal
  - 1. Calculation of Lowest Quintile Income and Poverty Indicators
  - 2. Financial Alternatives Analysis
  - 3. General Compliance Schedule Benchmarks
  - 4. Application of the FCA Guidance to Water Quality Standards Decisions
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**EPA's Clean Water Act Financial Capability Assessment Guidance**

**I. Background and Use of the FCA Guidance**

The FCA Guidance updates the Agency's approaches for assessing the financial capability of communities to fund CWA control measures. Section 402(q) of the CWA requires each permit, order, or decree issued pursuant to CWA Section 402 after December 21, 2000, for a discharge from a municipal

combined storm and sanitary sewer, to conform to EPA's April 11, 1994 Combined Sewer Overflow Control Policy (CSO Policy). The CSO Policy states that "[s]chedules for implementation of the CSO controls may be phased based on the relative importance of adverse impacts upon WQS and designated uses, priority projects identified in the long-term control plan, and on a permittee's *financial capability*." 59 FR 18694 (emphasis added). EPA considers each community's financial capability on a holistic case-by-case basis to ensure CWA requirements are met while also taking the financial capability of the community into consideration.

The FCA Guidance builds on EPA's past practice for assessing a community's financial capability as a part of determining the appropriate schedule to implement CWA control measures,<sup>1</sup> and provides additional metrics and templates that communities can use to more thoroughly demonstrate potential financial impacts. The guidance provides a planning tool for evaluating the financial resources a community has available to implement CWA controls. It also increases the transparency of EPA's considerations in applying FCA methodologies across the country in permitting and enforcement cases. EPA intends to also apply the Final FCA Guidance to the consideration of economic impacts to public entities when making WQS decisions on revisions to designated uses, WQS variances, and antidegradation reviews for high-quality waters. Prior to this Guidance, EPA recommended the public sector sections of the 1995 Interim Economic Guidance for Water Quality Standards (1995 WQS Guidance) for evaluating WQS decisions, including revisions to designated uses, WQS variances, and antidegradation reviews for high-quality waters. Those sections of the 1995 WQS Guidance were substantively identical to the 1997 FCA Guidance that is being replaced with the updated FCA Guidance. Rather than create duplicative documents, EPA has determined that the FCA Guidance can support both schedule negotiations and certain water quality decisions. The FCA Guidance supplements the calculations and analyses in the public sector portion of the 1995 WQS Guidance with additional analyses, an expanded economic impact matrix, and

recommendations to consider when making WQS decisions. EPA intends the FCA Guidance, together with the text in the public sector sections of the 1995 WQS Guidance, to guide states and authorized tribes in evaluating the economic impact of potential WQS decisions related to financial capability. The FCA Guidance does not revise the recommended methodology for the private sector found in the 1995 WQS Guidance.

The FCA Guidance metrics for financial capability assessments meet the following criteria recommended by the National Academy of Public Administration (NAPA):<sup>2</sup>

- Readily available from publicly available data sources;
- Clearly defined and understood;
- Simple, direct, and consistent;
- Valid and reliable measures, according to conventional research standards; and
- Applicable for comparative analyses among permittees.

**II. Overview of the Updated FCA Guidance**

The FCA Guidance recommends two alternative approaches for assessing a community's financial capability to implement CWA control measures. Alternative 1 retains the Residential Indicator (*i.e.*, 2% of MHI) and the Financial Capability Indicators from the 1997 FCA Guidance because they measure factors required under the Clean Water Act by the CSO Policy.<sup>3</sup> In addition to these two metrics, the FCA Guidance provides a new metric called the Lowest Quintile Poverty Indicator that provides a methodology for consideration of the lowest quintile income and poverty in the community's service area. In addition to their use to assist in negotiating CWA compliance schedules, EPA recommends the application of the methodologies from Alternative 1 of the FCA Guidance for the consideration of economic impacts to public entities when making decisions on WQS variances and antidegradation reviews. In appropriate cases, these methodologies could also inform decisions about revisions to

<sup>2</sup> NAPA issued a report titled "Developing a New Framework for Community Affordability of Clean Water Services" in October 2017.

<sup>3</sup> These factors are: (i) median household income; (ii) total annual wastewater and CSO control costs per household as a percent of median household income; (iii) overall net debt as a percent of full market property value; (iv) property tax revenues as a percent of full market property value; (v) property tax collection rate; (vi) unemployment; and (vii) bond rating. See 59 FR 18688, 18694, April 19, 1994.

<sup>1</sup> Historically, EPA assessed financial capability using EPA's 1997 FCA Guidance, EPA's 2014 Financial Capability Assessment Framework for Municipal Clean Water Act Requirements (2014 FCA Framework), and additional information submitted by communities.

designated uses, subject to additional analyses.

The FCA Guidance also provides a discussion of and a template for a Financial Alternatives Analysis that expands on the Secondary Financial Considerations in EPA's 1997 FCA Guidance and the CSO Control Policy.<sup>4</sup> The Financial Alternatives Analysis guides a community through consideration of programs that may help reduce financial impacts by lowering costs or assisting low-income residents. The Financial Alternatives Analysis is also consistent with EPA's Integrated Municipal Stormwater and Wastewater Planning Approach Framework (2012), which provides that integrated plans should include a financial strategy and capability assessment that ensures investments are sufficiently funded, operated, maintained and replaced over time and include consideration of current and planned rates and fees.<sup>5</sup> The expanded Financial Alternatives Analysis is designed to help strengthen both CWA protections and water service affordability protections. It allows municipalities negotiating compliance schedules and certain WQS revisions to demonstrate actions to reduce or mitigate the financial impact of water service costs, particularly on the community's low-income households, and to achieve compliance as expeditiously as possible.

For schedule development, the FCA Guidance provides a second option for assessing financial capability. Alternative 2 allows communities to develop a dynamic financial and rate model that looks at the impacts of rate increases over time on utility customers. EPA would review the financial and rate model along with the community's Lowest Quintile Poverty Indicator and Financial Alternatives Analysis in developing a compliance schedule.<sup>6</sup>

<sup>4</sup> The CSO Control Policy lists the following additional construction and financing schedule considerations for implementation plan scheduling: grant and loan availability; previous and current residential, commercial, and industrial sewer user fees and rate structures; and other viable funding mechanisms and sources of financing. See 59 FR 18688, 18694, April 19, 1994.

<sup>5</sup> In 2012, EPA developed the Integrated Municipal Stormwater and Wastewater Planning Approach Framework to offer a voluntary opportunity for a municipality to develop an integrated plan to meet multiple CWA requirements. On January 14, 2019, the Water Infrastructure Improvement Act (WIIA) (H.R. 7279) added a new section 402(s) to the CWA to include the 2012 Integrated Planning Framework.

<sup>6</sup> As discussed more fully in Section III.4, EPA does not recommend use of Alternative 2 alone for WQS decisions, but communities can provide financial and rate model data as additional information for consideration in conjunction with the Alternative 1 critical metrics.

The FCA Guidance can help to ensure that local challenges related to low-income households are better reflected in CWA implementation schedules and certain water quality decisions. When additional relevant financial or demographic information is presented that illustrates the unique or atypical circumstances faced by a community, EPA plans to consider this information. The FCA Guidance continues to encourage communities to submit supplemental financial information. Templates and calculations are provided to submit drinking water costs and other relevant information. These templates and calculations include references to publicly available data sources that can be used for compiling this information. The FCA Guidance is available at: <https://www.epa.gov/waterfinancecenter/clean-water-act-financial-capability-assessment-guidance>.

### III. Public Comments Received and Changes From the February 2022 Proposal

On September 18, 2020, EPA published a Proposed 2020 Financial Capability Assessment for Clean Water Act Obligations Guidance in the **Federal Register** for public comment.<sup>7</sup> On January 12, 2021, EPA posted a pre-publication version of the FCA Guidance on the Agency's website. The pre-publication FCA was never published in the **Federal Register** and was withdrawn for review in accordance with the January 20, 2021 White House Memorandum, Regulatory Freeze Pending Review.<sup>8</sup> On February 23, 2022, EPA published a Proposed 2022 Clean Water Act Financial Capability Assessment Guidance (Proposed 2022 FCA Guidance) in the **Federal Register** for public comment.<sup>9</sup> The Proposed 2022 FCA Guidance reflected EPA's consideration of public comments received in response to its September 2020 **Federal Register** publication, as well as feedback received through various stakeholder outreach sessions. EPA received 2,976 comments on the Proposed 2022 FCA Guidance during the 60-day comment period. The main areas of comments and EPA's responses are described below.

#### 1. Calculation of Lowest Quintile Income and Poverty Indicators

In the Proposed 2022 FCA Guidance, EPA offered two options for calculating

a new metric intended to help assess the severity and prevalence of poverty in a community's service area. The Proposed Option 1 was to add a single new metric to the FCA, called the Lowest Quintile Poverty Indicator (LQPI), to be considered with the Residential Indicator and Financial Capability Indicator. The Proposed Option 2 was to add two new metrics, the Lowest Quintile Income Indicator (LQII) and the Poverty Indicator (PI). Based on public comments received, EPA has chosen Option 1. While both options effectively characterize the severity and prevalence of poverty in a community, comments received from several state co-regulators indicated that the formula in Option 1 was easier to implement.

Several commentors also suggested incorporating more local data points into the LQPI, such as cost of living, to supplement the comparison of a community's lowest quintile income and other poverty factors against national benchmarks. EPA found that some of the recommended additional factors involved datasets that are not easily publicly accessible or not available at the service area level. The FCA Guidance retains the proposal's Lowest Quintile Poverty Indicator factors, which are readily available from publicly available data sources and provide a simple and consistent method to assess the severity and prevalence of poverty in a community. These factors are:

- Upper limit of lowest quintile income;
- Percentage of population with income below 200% of the Federal poverty level;
- Percentage of households receiving food stamps/SNAP benefits;
- Percentage of vacant housing units;
- Trend in household growth; and
- Percentage of unemployed population 16 and over in the civilian labor force.

These factors identify community characteristics that provide a general understanding of the service area status. To supplement the Lowest Quintile Poverty Indicator, communities may provide information about local considerations that may not be fully captured by the approach detailed in the guidance.

#### 2. Financial Alternatives Analysis

EPA received both supportive and negative comments related to the Financial Alternatives Analysis. Supportive comments identified the Financial Alternatives Analysis as a tool to assist in achieving water quality benefits sooner while seeking to minimize financial burdens on

<sup>7</sup> 85 FR 58352 (September 18, 2020).

<sup>8</sup> See <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/20/regulatory-freeze-pending-review/>.

<sup>9</sup> 87 FR 10193 (February 23, 2022).

ratepayers, especially those from low-income households. The negative comments asserted that the Financial Alternatives Analysis was too resource-intensive and that it involved EPA in matters under local government purview such as utility management and rate setting. Many commentors asked EPA to clarify how a Financial Alternatives Analysis should be completed and how it will likely be reviewed.

EPA plans to retain incentives for municipalities seeking extended compliance schedules or certain WQS revisions to describe their strategies for lowering costs and reducing impacts on low-income households through a Financial Alternatives Analysis. These strategies may include use of variable rate structures, consumer assistance programs, and applications for grants or subsidies from the Clean Water State Revolving Fund (CWSRF). Significant new sources of funding available from the Bipartisan Infrastructure Law create new opportunities for communities to secure funding to support CWA compliance. In response to comments, the guidance simplifies how the Financial Alternatives Analysis could be considered as part of schedule extension requests or certain WQS decisions and provides additional resources and templates for its completion. The Financial Alternatives Analysis walks communities through various financial alternatives and describes how these programs may, in some instances, mitigate financial impacts. The information gleaned from this step is intended to inform EPA's consideration of an extended CWA schedule or WQS decision related to economic impacts, particularly when the economic impacts affect low-income households. In evaluating the Financial Alternatives Analysis, EPA expects to look comprehensively at the community's financial strategy, including, but not limited to, an analysis of the community's approach to covering costs through rate structure and design as well as its other initiatives to assist low-income customers while assuring necessary and timely compliance with environmental requirements.

The FCA Guidance revises the Financial Alternatives Analysis based on input from commenters. Some commenters requested greater clarity on the steps to complete the Financial Alternatives Analysis. Other commenters asked that interpretation of the Financial Alternatives Analysis results be clearly explained and reproducible. In response, EPA is providing more explanation of how a

Financial Alternatives Analysis may be completed and also is simplifying the method the agency intends to use to include the results of a Financial Alternatives Analysis in a financial capability assessment.

In the FCA Guidance, EPA clarifies methods for completing a Financial Alternatives Analysis. The discussion of the Financial Alternatives Analysis has been expanded and an example financial alternatives worksheet is provided. Appendix C contains a more detailed discussion of financial alternatives, with explanations of how various alternatives may help to minimize the financial impacts of CWA controls, links to resources for implementing financial alternatives, and case studies. In addition, the FCA now provides a template to assist in documenting consideration of financial alternatives. It also makes clear that other documentation may be submitted instead if it provides a descriptive and thorough discussion of financial alternatives that have been implemented, are being planned or considered, or are not being pursued.

Further, the FCA Guidance simplifies consideration of the Financial Alternatives Analysis by interpreting its result at the end of the analytical process rather than as an intermediary step. The Proposed 2022 FCA Guidance recommended calculation of an Initial Lowest Quintile Poverty Indicator score and then adjustment of that score according to the outcome of the Financial Alternatives Analysis. Because adjustment of the Initial Lowest Quintile Poverty Indicator score involved evaluation of the adequacy of the Financial Alternatives Analysis, this analytical step increased uncertainty for stakeholders and regulators tasked with developing or evaluating the analysis. To address that issue, the FCA Guidance considers the results of the Financial Alternative Analysis at the end of the analytical process, as part of Exhibit 9. General Implementation Schedule Benchmarks, for schedule negotiations, and in Exhibit 13. Recommendations for Making WQS Decisions, for variances, use changes, and anti-degradation reviews. Because the Financial Alternatives Analysis provides key information about the extent of possible financial impacts and whether those impacts might outweigh the environmental impacts of extended noncompliance or water quality standards decisions, general benchmarks for compliance schedules tend to be shorter and recommendations for WQS decisions more conservative for communities without a comprehensive Financial Alternatives

Analysis. This modification simplifies the FCA analysis while providing for consideration of the Financial Alternatives Analysis as part of a holistic financial strategy for balancing the financial and environmental impacts of extended CWA compliance schedules or potential changes to water quality standards.

Some commenters suggested that the Financial Alternatives Analysis would require entities seeking schedule extensions or certain WQS decisions to ignore local legal restrictions. EPA has clarified the language in the FCA Guidance to address this perception. The FCA Guidance provides ideas for thinking creatively and broadly about how to help with rate impacts to residents, within legal boundaries. The information and resources contained in the FCA Guidance is intended to help communities understand and consider all their financial options related to the costs and timeframes of constructing and implementing CWA controls. From EPA's experience, some communities may not be aware of available resources and potential options for implementing certain financial alternatives. The combination of the information available in the expanded Appendix C, along with the availability of EPA technical assistance ([WaterTA@epa.gov](mailto:WaterTA@epa.gov)), may help some communities consider and pursue available alternatives.

In most cases, communities will have considered or implemented at least some of the financial alternatives as general good practices of utility management. Performing the Financial Alternatives Analysis at the beginning of an FCA may help a community evaluate all costs associated with the implementation of CWA controls, such as reduced costs associated with low-interest loans, increased revenue from utility fees, or the costs associated with programs that assist low-income households. Performing this analysis early will allow these costs to be accounted for in the Residential Indicator and Financial Capability Indicator. The FCA Guidance also recognizes that not all financial alternatives may be legally or practically feasible for all communities and that the ability to implement some financial alternatives may depend on state and local laws or other practical considerations related to the structure or organization of the permittee. Although certain financial or funding considerations listed in Appendix C may be prohibited by state law, there still may be alternative mechanisms to achieve the same goals. Appendix C provides examples of communities that

have encountered legal barriers yet were able to implement similar or analogous mechanisms to reduce financial impacts. When a community does not include available tools in its plan, a written explanation of the reasons for omitting them should be provided.

While the Financial Alternatives Analysis is a valuable tool to balance the key goals of minimizing financial impacts and ensuring that residents benefit from CWA protections, EPA understands that the cost of completing the analysis may be a barrier for some communities. Some commenters raised concerns about limited resources available to some communities. To ensure that all communities, including underserved and low-income communities, have access to this tool, the FCA Guidance describes the support EPA is making available to assist with completing a Financial Alternatives Analysis, through EPA's Water Finance Center. If resource constraints remain, a community could provide information on current and planned efforts to reduce costs and relieve impacts on low-income residential households in a format that represents a good-faith effort relative to the size of the community's service area. In addition, for small communities, particularly those serving less than 3,000 persons, for which it may not be feasible to make a good faith effort to document the financial alternatives in Appendix C, EPA plans to be mindful of those resource constraints when developing compliance schedules and evaluating WQS decisions based on economic impacts.

### 3. General Compliance Schedule Benchmarks

The Proposed 2022 FCA Guidance provided a general compliance schedule benchmark of up to 15 years for communities that demonstrate "medium" FCA impacts. For communities demonstrating "high" FCA impacts, the proposal provided a general compliance schedule benchmark of generally up to 20 years, or as long as 25 years for unusually high impacts. Multiple commentors indicated that these timeframes were too short and are inconsistent with CWA consent decrees that include schedules longer than 25 years. On the other hand, several states commented that the compliance schedule benchmarks were reasonable guidelines.

EPA recognizes that there are existing CWA compliance schedules (or modified compliance schedules) that go beyond the guidance's Exhibit 9 General Implementation Schedule Benchmarks. Exhibit 9 provides guidelines for

developing consistent and reasonably uniform implementation schedules across the nation in situations where permittee's CWA controls impose similar financial burdens. The general benchmarks are not intended to replace or prejudice the negotiations and deliberations involved to balance all environmental and financial considerations that influence the site-specific nature of the controls and implementation schedules. As was done under EPA's prior FCA guidance, the agency plans to consider implementation schedules that are different than the schedules suggested by the FCA Guidance's baseline analysis when circumstances justify departing from the general benchmarks.

It is also important to consider human health and environmental impacts in addition to cost when considering extended schedules. EPA received comments that EPA should ensure that compliance schedules are no longer than necessary. The majority of comments from over 2,900 individual commentors urged EPA not to delay compliance with the Clean Water Act. EPA is mindful that prolonging water quality impairments could exacerbate environmental justice concerns. The CWA requires that compliance schedules included in NPDES permits must "require compliance as soon as possible." 40 CFR 122.47(a)(1). The CSO Policy, and CWA section 402(q) adopting the policy as law, also states that NPDES authorities should ensure that "CWA requirements are complied with as soon as practicable." 59 FR 18688, April 19, 1994. As described in Section III.2 of this document, the Exhibit 9 General Implementation Schedule Benchmarks have been updated to consider whether a comprehensive Financial Alternatives Analysis was submitted as part of the financial capability assessment. The consideration of a financial strategy to reduce costs and relieve impacts on low-income households provides information about possible remaining financial impacts on a community. Without a Financial Alternatives Analysis, it will likely be harder for EPA to assess whether those impacts might outweigh the environmental impacts of extended noncompliance. While the overall ranges for "medium" and "high" FCA impact communities are the same as the Proposed 2022 FCA Guidance, the general compliance schedule benchmarks for compliance schedules without a comprehensive Financial Alternatives Analysis for each category are shorter than for communities within that category with a comprehensive

Financial Alternatives Analysis.

Overall, EPA believes that, for unusually high impacts and after consideration of available financial alternatives, 25 years is a reasonable general scheduling benchmark that is consistent with the CWA and CSO Policy. In addition, several states co-regulators with experience using FCAs to aid in developing CWA compliance schedules commented that the general compliance schedule benchmarks were reasonable.

### 4. Application of the FCA Guidance to Water Quality Standards Decisions

EPA received some comments that the application of the FCA Guidance to WQS decisions based on economic impacts was inconsistent with the applicable WQS regulations because the proposed methodologies were either too stringent or not stringent enough. The WQS regulations specify that economic factors may be considered for revisions to designated uses and WQS variances (40 CFR 131.10(g)(6)) and during antidegradation reviews (40 CFR 131.12(a)(2)). EPA's FCA Guidance does not and cannot change the WQS regulations that allow for consideration of economic factors in WQS decisions. However, it is EPA's intention for the FCA Guidance to serve as an update to EPA's 1995 WQS Guidance for public entities. The FCA Guidance recommends additional safeguards to ensure that WQS decisions that may potentially lower water quality are justified and that low-income households do not disproportionately bear the burden of such decisions.

EPA received comments that the 2022 Proposed FCA Guidance was over-prescriptive as applied to use attainability analyses/designated use revisions. Some commenters stated that the guidance was not clear enough on the distinction between WQS variances, use attainability analyses, and antidegradation reviews. Based on these comments, EPA revised the FCA Guidance to more thoroughly consider the legal, technical, and practical considerations unique to water quality standards. The FCA Guidance discusses the differences among WQS variances, revisions to designated uses, and antidegradation reviews, and provides step-by-step recommendations on how to perform the analysis and interpret the results in the context of these different WQS decisions.

The metrics and thresholds in the 1995 WQS Guidance and Alternative 1 of the FCA Guidance are based on an analysis of financial and economic data that reflect conditions during a particular period of time, *i.e.*, a

“snapshot” of financial and socio-economic data. As such, these metrics and analyses are well-suited and most appropriate for evaluating requests for WQS variances under 40 CFR 131.10(g)(6). The time-limited nature of a WQS variance ensures that changes in financial conditions would be considered if and when there is a request for a subsequent variance or at the time of reevaluation for a WQS variance with a duration longer than five years. Because the revision of a designated use (including a revision to a less stringent use subcategory) or allowing degradation of high-quality waters could have an environmental impact with a much longer timeframe, EPA recommends caution when making such WQS decisions using “snapshot” economic and financial information. EPA recommends states and authorized tribes first explore whether there are other factors under 40 CFR 131.10(g) that preclude attainment of the designated use when considering a revision to a designated use. Where states and authorized tribes choose to pursue a use change or degradation of high-quality water, EPA recommends an expanded multi-step approach to evaluate economic impacts. EPA has revised the FCA Guidance to better explain the distinction between a WQS variance and a revision to a designated use or antidegradation review. EPA also outlines how these recommendations relate to the objective of the CWA to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.”

Several commentors questioned why Alternative 2 was not recommended as a sole basis for supporting WQS decisions. Although financial and rate models may provide information on the impact of different rate scenarios over time, such information is insufficient to determine if required wastewater treatment projects necessary to meet water quality standards would result in substantial and widespread economic and social impacts. Financial and rate models also do not provide information about whether lowering of water quality would be necessary to accommodate important economic or social development. Furthermore, EPA is not aware of any specific thresholds or benchmarks that could be uniformly applicable across all communities to make WQS decisions. However, EPA agrees that financial and rate models can be helpful as supporting information for WQS decisions. The agency provided additional language in the FCA Guidance to better explain its

views on financial and rate models in WQS decisions.

The FCA Guidance does not alter EPA’s review of changes to water quality standards. The CWA specifies that any state or tribal water quality standard must be submitted to EPA for review and approval or disapproval. 33 U.S.C. 1313(c). Adoption of a WQS variance or revision of a designated use is a change to water quality standards. In addition, EPA can object to an NPDES permit issued by an authorized state or tribe if the permit does not conform to the statute or regulations, including the lowering of water quality in high-quality waters without an adequate demonstration that such lowering of water quality is necessary for important economic or social development in the area in which the high-quality waters are located. See, e.g., 33 U.S.C. 1311(b)(1)(C) and 1342. EPA will continue to evaluate WQS and NPDES permits as it has for decades in a transparent manner consistent with applicable statutes, regulations, guidance, and long-established policies.

#### IV. Conclusion

The FCA Guidance outlines strategies for communities to support affordable utility rates while making water quality decisions and planning investments in water infrastructure that are essential to protecting clean water. EPA is committed to ensuring that all Americans have access to essential water services and clean water. This guidance provides a needed framework that can help achieve that goal for rural, suburban, and urban communities across the country. The more detailed financial analysis in the FCA Guidance will provide communities and EPA a clearer picture of a community’s financial capability and strategies to protect low-income residents while achieving timely and equitable clean water protections. Federal funding initiatives and programs such as the Bipartisan Infrastructure Law (BIL), American Rescue Plan Act (ARPA), State Revolving Loan Funds (SRFs), Water Infrastructure Finance and Innovation Act (WIFIA) and others provide billions of dollars for state, local, territorial, and tribal governments. These resources create a historic opportunity for municipalities to address long-standing challenges with shorter compliance schedules, providing water quality and public health improvements that deliver important social, environmental, and economic benefits to communities. EPA will continue to consider each community’s financial capability on a holistic case-by-case basis. Where

appropriate, EPA has and will continue to consider supplemental information submitted by the community to negotiate reasonable and effective schedules for implementation of the CWA controls.

**Andrew D. Sawyers,**

*Director, Office of Wastewater Management,  
Office of Water.*

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## ENVIRONMENTAL PROTECTION AGENCY

**[EPA-R10-OW-2022-0418; FRL 10624-01-OW]**

### **Final Determination To Prohibit the Specification of and Restrict the Use for Specification of Certain Waters Within Defined Areas as Disposal Sites; Pebble Deposit Area, Southwest Alaska**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** Pursuant to Section 404(c) of the Clean Water Act (CWA), the Environmental Protection Agency (EPA) is issuing a Final Determination to prohibit the specification of and restrict the use for specification of certain waters in the South Fork Koktuli River (SFK), North Fork Koktuli River (NFK), and Upper Talarik Creek (UTC) watersheds as disposal sites for certain discharges of dredged or fill material associated with developing the Pebble deposit, a copper-, gold-, and molybdenum-bearing ore body located in Southwest, Alaska.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the Final Determination, contact Palmer Hough, Oceans, Wetlands and Communities Branch, Office of Water (4504-T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number (202) 566-1374; email address: [hough.palmer@epa.gov](mailto:hough.palmer@epa.gov). For more information about EPA’s efforts in Bristol Bay and to review the CWA Section 404(c) Final Determination, see <http://www.epa.gov/bristolbay>.

#### **SUPPLEMENTARY INFORMATION:**

#### **I. Clean Water Act Section 404(c) Review Process**

The EPA’s mission is to protect human health and the environment. The CWA, the objective of which is to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters,” 33 U.S.C 1251(a), is