



April 29, 2022

Ms. Brenda Mallory
Chair
Council on Environmental Quality
730 Jackson Place NW.
Washington, DC 20503

Re: Docket number CEQ-2022-0002; feedback on the Climate and Economic Justice Screening Tool Beta Version

Dear Chair Mallory,

The Association of Metropolitan Water Agencies (AMWA) is pleased to have the opportunity to comment on the Council of Environmental Quality (CEQ) Climate and Economic Justice Screening Tool Beta Version. AMWA is an organization of the general managers and CEOs of large publicly owned drinking water utilities. Members serve communities of more than 100,000 people, and the majority of communities include populations classified as disadvantaged under this tool. The association appreciates the work CEQ and other federal agencies have done to advance environmental justice and is pleased to provide the following feedback. Our comments are presented in three sections to provide feedback and questions on CEQ’s data and methodology in developing the tool, general inquiries about how the tool will be used in meeting the President’s Justice40 goals, and questions about how CEQ will track equity in funding in light of an inconsistent application of criteria to identify disadvantaged communities.

Methodology and data

AMWA has two comments regarding data usage in the tool:

1. A component of the criteria for being identified as disadvantaged is an area that is below 20 percent of the population enrolled in a higher education plan. Has CEQ considered using information from the census such as “degree obtained” instead, because areas without a higher educational institution nearby will likely not have a high percentage of enrollment in those areas? However, this does not necessarily mean a large portion of people residing in that area has not already attained a higher degree.

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2. In the critical drinking water and clean water/wastewater infrastructure category, drinking water compliance or criteria related to drinking water was not considered. We request CEQ explain why this is the case. There are tools that track compliance with EPA drinking water regulations that could assist in identifying areas where standards are not met. The [Enforcement and Compliance History Online \(ECHO\) system](#) includes public water systems data from the EPA's [Safe Drinking Water Information System \(SDWIS\) database](#). The SDWIS database includes information on all public water systems in the nation and SDWA violation information for each public water system.

In regard to additional criteria for determination of disadvantaged areas or populations, CEQ should consider several factors that go into assessing water affordability in a service area in addition to being above the 65th percentile for low income. Many of these factors, like cost of living in a particular area, percent of income going towards water services, aging water infrastructure, and water availability are expected to put upward pressure on local water rates in the coming years and are not incorporated into this tool. As the nation struggles to recover from the COVID-19 pandemic and address the increasing effects of climate change, large portions of communities have difficulty paying their water bills even though they may not qualify as disadvantaged under this tool as it currently stands. Access to safe, clean drinking water is a necessity, and any barriers to it should and can be identified in this tool. As an example, the Duke Nicholas Institute for Environmental Policy Solutions created a Water Affordability Dashboard that allows users to compare their water rates with others in their community based on usage and looks at how affordable rates are in the area. While the tool is incomplete in that it does not have information for all metropolitan areas, the information and criteria provided is critical to identifying areas with water affordability issues.

General inquiries about the government's use of the tool

There has been much discussion surrounding this tool, particularly among the White House Environmental Justice Advisory Committee and news outlets that follow updates on the administration's Justice40 initiative. AMWA observes the challenges in providing comments on the tool without understanding how CEQ, other federal agencies, and the administration, as a whole, plan to use the tool and without understanding the implications of the tool's use. Key questions are:

- How will the tool be used to allocate certain federal funds according to Justice40? Specifically, will the tool be used to define disadvantaged communities for the purposes of allocating 40 percent of certain federal funds to disadvantaged communities? How will this tool work with other state and agency definitions of "disadvantaged communities" and provisions requiring allocation of funds to them?
- How will the tool incorporate (or supersede) other government tools that identify environmentally disadvantaged areas that use different criteria? For example, EPA's EJScreen uses historic discriminatory practices related to race, such as redlining, to identify environmental justice (EJ) communities, while CEQ's tool does not.

- What are the implications for funding where the tool identifies disadvantaged communities (e.g., two census blocks) within a larger area (e.g., an entire city) that may be the party to receive federal funding?

Inconsistency between states and agencies in identifying disadvantaged communities

At the forefront of drinking water utilities' priorities is protecting public health by providing safe, clean drinking water to communities. Utilities often use funds available through government programs to supplement efforts to do this. With this administration's push toward environmental justice, billions of dollars in federal funding will be directed to disadvantaged communities. AMWA requests clarity regarding how the tool will interact with differing state and federal methods for identifying disadvantaged communities and requirements to allocate funds to them. In addition to Justice40, programs funded through the Bipartisan Infrastructure Law (BIL) also included stipulations for percentage of funding being used for disadvantaged communities. As an example, the BIL specifies that 49 percent of State Revolving Fund (SRF) appropriations must be provided in the form of additional subsidy (i.e., grants or 100 percent principal forgiveness loans) to what EPA has described, through their implementation memo, as state-defined "disadvantaged communities." As CEQ is tracking the investment of federal money to underserved communities, AMWA requests that CEQ make it clear how it is coordinating with EPA and other federal agencies and how the tool might assist in tracking these investments, particularly when the criteria for the tool may be different from the criteria being used under the BIL.

Specifically, the BIL specifies that 49 percent of DWSRF funds received by states through the law must be used to provide additional subsidization to "eligible recipients," a term that is not defined. As noted in letters to EPA and reiterated in a statement to Capitol Hill, AMWA requested EPA allow these additionally subsidized funds to be offered to projects in any community that will benefit a low-income population. However, EPA's implementation memo instead requires that the additionally subsidized funds be directed to "state-defined disadvantaged communities" under SDWA. This will prevent many large drinking water systems from accessing the funds, though the memo also "strongly encourages" states to amend their disadvantaged community definition if it may function as a barrier to certain communities receiving funding. In addition, CEQ's Beta tool may or may not identify these areas as disadvantaged, creating further confusion on whether projects apply towards the Justice40 initiative.

It remains unclear how CEQ and other agencies will track federal dollars spent in benefit of disadvantaged communities with respect to stipulations in the BIL and the administration's Justice40 initiative, specifically where a disadvantaged community exists within a utility's larger overall service area. For example, utilities use funds from SRFs and other sources for the benefit of the entire service area, but a utility's entire service area may include specific census tracts that would be considered disadvantaged communities according to the CEQ screener tool and other

low-income communities that do not meet the screener tool or state definitions of disadvantaged communities. For utilities with pockets of disadvantaged communities within their service areas, will the utility be eligible to receive funds dedicated for use in disadvantaged communities, and will money they spend count towards the Justice40 initiative? A main concern is that the multitude of definitions of “disadvantaged community” throughout states and federal agencies will lead to confusion, potentially excluding targeted populations from funds, because they reside within a large utility service area.

Allocating funding under the BIL and Justice40 to entire service areas where disadvantaged communities will be positively impacted would allow AMWA members the most flexibility to help disadvantaged communities in their service areas. The CEQ screening tool identifies numerous disadvantaged census tracts within the service areas of many of AMWA’s members. It would be helpful to recognize the presence of these disadvantaged census tracts in metropolitan areas in allocating the funds designated for disadvantaged communities under the BIL and other specific federal funding. For example, if 20 percent of the service area contains tracts classified as disadvantaged, and a project, such as a water treatment plant upgrade, will benefit the entire community, then it seems appropriate to allow at least 20 percent of the SRF project funds to come from the targeted funding (i.e., zero interest loans or grant funding) for disadvantaged communities. In this situation, the entirety of the funds would be directly benefitting disadvantaged communities; therefore, some or all of the funding should be counted as such. AMWA requests that CEQ recognizes that funds will be used to benefit the entire service area, which includes disadvantaged communities that will be positively impacted by the project.

Regarding lead service line replacement, allowing funds to go to an entire service area that benefit a disadvantaged community would strengthen utility efforts to replace these lines, which pose a disproportionate risk to disadvantaged communities. It is crucial that utilities have access to all tools necessary to ensure these communities have safe drinking water. Having access to funds targeted to disadvantaged communities would assist large utilities in their efforts to do this in a localized manner, addressing the most affected areas first. AMWA asks CEQ to consider if the agency intends to use this tool to decide on eligibility for certain programs that address efforts to replace lead service lines.

Finally, AMWA asks CEQ to describe how communities and government service providers such as publicly owned water and wastewater utilities should use these screening tools to make decisions about spending public funds to address disadvantaged communities. Cities likely have many different quintiles of economically disadvantaged communities, and at a local level, these screening tools can help prioritize spending in communities that have compounded issues related to environmental justice, such as water service, housing stock, and more.

Conclusion

With states and agencies using different definitions of disadvantaged communities to make decisions on funding and other program benefits, CEQ must work to clarify the use of the

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screeener tool and standardize the definition of disadvantaged communities for this tool to be beneficial. Otherwise, agencies and communities will not be able to reliably use this tool to identify disadvantaged communities. If this tool is only going to be used for quantifying metrics described in Justice40, CEQ must explicitly state this, so there is no confusion among federal agencies and the public on eligibility for other government programs. In addition, CEQ should make clear the approach for how the Justice40 accountability will be calculated and how this tool will play into the process.

AMWA sincerely thanks CEQ for the opportunity to comment on its Climate and Economic Justice Screening tool and appreciates the agency's efforts toward environmental justice. If you have any questions, please contact Erica Brown (Brown@amwa.net), AMWA's Chief Strategy and Sustainability Officer.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Michael Arceneaux', with a long horizontal flourish extending to the right.

Michael Arceneaux
Acting Chief Executive Officer

cc: Radhika Fox, EPA OW
Jennifer McLain, EPA OGWDW
Andrew Sawyers EPA OWM
Matthew Tejada, EPA OEJ