



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

June 16, 2022

THE ADMINISTRATOR

The Honorable Leirion Gaylor Baird
Chair
Local Government Advisory Committee
555 South 10th Street
Lincoln, Nebraska 68508

Dear Mayor Gaylor Baird:

I would like to thank you for your February 18, 2022, letter providing recommendations on the U.S. Environmental Protection Agency's implementation of the Bipartisan Infrastructure Law. I regret that I was not able to join you and the other Local Government Advisory Committee members on February 17. President Joe Biden and I were in Lorain, Ohio, that day visiting with local elected leaders who have played a critical role in strengthening public health and environmental protections.

As an agency, we strongly agree with the committee that the Bipartisan Infrastructure Law is a historic opportunity to invest in our communities and position them for a more successful and sustainable future. These investments will be transformational for communities that have been waiting decades to address long-standing infrastructure gaps, and it is essential that we distribute BIL funding and implement BIL programs in the most equitable way.

I recognize the importance of the BIL's funding for local governments and deeply appreciate the committee's thoughtful recommendations. We have carefully reviewed the committee's recommendations and have already incorporated many of them into our planning process for several BIL programs, including the examples we describe below. The EPA will continue to consider these recommendations and incorporate throughout the implementation process for BIL where appropriate.

Integrating Equity and Environmental Justice

As noted in the agency's latest Strategic Plan,¹ advancing justice and equity is a foundational principle for the EPA, and we are centering equity and environmental justice in program design and implementation considerations for the BIL. The EPA is committed to carrying out President Biden's Justice40 Initiative by advancing environmental justice and incorporating equity considerations into all aspects of BIL implementation. Nearly all BIL programs will be included in Justice40 and have already taken concrete steps to advance Justice40 this year. Thanks to the BIL, the EPA has the financial resources to make significant progress correcting historic and persistent injustices and lay

¹ *FY 2022-2026 EPA Strategic Plan*. March 28, 2022. Available at <https://bit.ly/3NTKvpE>.

down infrastructure that will improve the lives of generations to come. The EPA's goal is to exceed 40 percent of benefits, including investments, going to disadvantaged communities.

For example, the EPA recently released a State Revolving Fund Implementation Memorandum² to states that requires the 49 percent of BIL SRF funds eligible to be grants or fully forgivable loans go to disadvantaged communities. The memorandum also urges states to revise disadvantaged community definitions (set by states under the Clean Water Act and Safe Drinking Water Act) and provides best practices, criteria, and tools to use when revising their definitions. The prioritization of grant and forgivable loan funding to these communities will also support the goal of ensuring water systems can prioritize affordability and minimize rate impacts of infrastructure improvements. States are also encouraged to evaluate their priority point systems to determine whether they act as a barrier to, or encourage funding for, disadvantaged communities.

Thanks to the historic BIL investment, we are poised to make substantial progress in cleaning up communities. For example, the BIL includes \$3.5 billion for the Superfund Program, where approximately 60 percent of the Superfund sites to receive BIL funding for new cleanup starts are in historically underserved communities. In addition, as a Justice40 pilot program, the brownfields program hosted an environmental justice listening session and will promote the use of EJScreen in Fiscal Year 2023 grant guidelines. A Fiscal Year 2021 analysis showed that nearly 70 percent of the total brownfields program's appropriations were awarded to grantees that served a county that meets the program's definition of disadvantaged.

We are also incorporating the committee's recommendations in the Pollution Prevention Program. For example, the solicitation recently published for P2 grants funded by the BIL explicitly requests that grant proposals emphasize providing P2 technical assistance to address environmental and human health concerns in disadvantaged communities.³ This is incorporated in our evaluation criteria for the grant proposals, and we include reporting measures to track our grantees' work in communities with environmental justice concerns. The P2 Program has developed a P2 Environmental Justice Facility Mapping Tool⁴ to help grantees identify facilities that are in or adjacent to communities with environmental justice concerns and are also within industry sectors that align with the P2 Program National Emphasis Areas. This tool and the EPA's EJScreen tool are referenced in the BIL-funded P2 grant solicitation and in all our outreach and webinars for the solicitation.

Providing Flexibility and Assistance

We understand the importance of providing technical assistance and targeted local support to support states and communities in BIL implementation. Throughout our BIL programs, we are considerably ramping up technical assistance efforts. For example, the SRF program is developing an extensive technical assistance strategy that will begin targeted technical assistance pilots this summer and will scale up over time to help identify communities that need assistance, support community engagement and technical planning, write SRF funding applications and support ongoing capacity building.

² *Implementation of the Clean Water and Drinking Water State Revolving Fund Provisions of the Bipartisan Infrastructure Law*. March 8, 2022. Available at <https://bit.ly/3NqS9YF>.

³ Available at <https://bit.ly/3moRuLK>.

⁴ Available at <https://www.epa.gov/p2/p2-ej-facility-mapping-tool>.

In addition, the brownfields program will invest a historic level of funding under the BIL to capacity building and direct technical assistance to communities. At no cost to communities, the EPA's partners will provide specialized technical knowledge, research and training to help stakeholders understand brownfields-related subject matter and guide them through the brownfield assessment, cleanup and revitalization process. For example, brownfields and land revitalization program staff at EPA headquarters and in each of the EPA's regional offices are promoting the availability of these resources to disadvantaged communities. In addition, the brownfields program hosted multiple listening sessions for states, tribes and local governments focused specifically on BIL implementation and brownfields grant programs.

We also hear you regarding the need to ensure adequate flexibility and deference to local governments. For example, a fundamental principle of the SRF is the flexibility provided to states and borrowers to address a wide variety of local water quality and public health challenges and the broad range of eligible projects. The SRF Implementation Memo urges states to provide flexibility to meet local water needs, including funding for infrastructure projects that make water systems more resilient to all threats.

Prioritizing Climate-Resilient Projects

The EPA plays a critical role in the Biden-Harris Administration's whole-of-government approach to tackling climate change, including how we implement our BIL programs. Climate change compounds many environmental problems and highlights the need to work with the EPA's partners to implement programs for protecting and improving the resilience of both built and natural infrastructure. We are committed to ensuring that our investments consider climate change to the greatest extent possible and help empower tribes, states and communities across the nation to anticipate, prepare for, adapt to and recover from the impacts of climate change.

For example, the EPA's Office of Superfund Remediation and Technology Innovation last year issued *Consideration of Climate Resilience in the Superfund Cleanup Process for Non-Federal National Priorities List Sites*.⁵ This memorandum recommends approaches the EPA regions should consider when evaluating climate resilience throughout the remedy selection and implementation process for sites proposed or currently listed on the National Priorities List. The recommended approaches may involve program or site activities intended to ensure or build, where needed, resilience in the long-term integrity of remedial actions, considering extreme weather events, and will be incorporated into remedies implemented with BIL funds. By using the best climate science in Superfund decision-making, we can ensure that EPA cleanups remain protective, especially for vulnerable populations.

We also agree with the committee that the historic investment in clean school buses from the BIL will benefit communities across the nation. The EPA is committed to working with stakeholders to see that funding opportunities are available for school districts interested in providing clean transportation to students, including those areas where significant public health concerns exist. The EPA will use existing tools and data sources to identify and prioritize high-need and low-income areas. As the program ramps up, starting with award of initial rebates in spring 2022, the EPA will be providing program support and information through its headquarters and regional offices to help

⁵ Consideration of Climate Resilience in the Superfund Cleanup Process for Non-Federal National Priorities List Sites. June 30, 2021. Available at <https://semspub.epa.gov/work/HQ/100002993.pdf>.

stakeholders determine the best technical solutions for the particular school bus routes they wish to service with a new cleaner school bus. Part of this support will be closely coordinated with the joint office set up by the departments of Energy and Transportation to implement the Administration's electric vehicle charging programs. We agree with the committee that having consistent charging requirements across the commercial truck fleet can be a very important part of the infrastructure needed to support new electric vehicles and understand that significant work is already underway to reach this goal. We look forward to working with the LGAC as we implement this program.

Promoting Innovation and Efficiency of Water Resources

The EPA is always thinking about how we can support innovation and emerging technologies throughout our programs, but it will be crucial as we think about our BIL programs from water to solid-waste management and recycling. Along with building new infrastructure, we must think about how we can improve existing infrastructure with new technologies to achieve more effective and efficient environmental progress. We agree with the committee's assessment that emerging technologies can play important roles in addressing emerging contaminants and threats.

For example, the SRF implementation memo highlighted innovative approaches for water reuse as a priority for states, including the One Water Innovation. Due to the flexibilities in the SRF program and the wide range of eligible projects, we can leverage approaches like innovative water reuse as a tool to address water scarcity in many regions of the country and enable communities to deploy these solutions.

The BIL also provides critical resources to address the challenges from harmful algal blooms and encourage innovative solutions to nutrient runoff and nonpoint source pollution. Importantly, the BIL provides significant funding and tools to reduce nutrient runoff through the Gulf Hypoxia Task Force, which seeks to improve water quality across the Mississippi basin and dramatically reduce the size of the Gulf Hypoxic Zone by 2035. In addition, we will use funding from the BIL to help states and communities to implement total maximum daily load programs and plans to address nonpoint source pollution.

If you have any questions or need additional assistance, you are welcome to contact Zealan Hoover in the Office of the Administrator at (202) 306-6891 or hoover.zealan@epa.gov, or LGAC Designated Federal Official Paige Lieberman at (202) 564-3115 or Lieberman.paige@epa.gov.

We look forward to working with you and the communities that you represent as we the implement the various BIL programs. In the meantime, please accept my warmest wishes.

Sincerely yours,


Michael S. Regan