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Policy for the EPA's Review and Action on Clean Water Act Program Submittals: U.S. Environmental Protection Agency Assistant Administrator (Water) Radhika Fox Announces Rescission

02/14/2022

United States Environmental Protection Agency ("EPA") Assistant Administrator for Water, Radhika Fox, authored a February 4th memorandum titled:

Rescission of Memorandum Titled: "Policy for the EPA's Review and Action on Clean Water Act Program Submittals" ("Rescission Memo")

The *Rescission Memo* was transmitted to EPA's Regional Administrators.

The *Rescission Memo* rescinds a June 3, 2019, memorandum authored by the former Assistant Administrator for Water, Dave Ross, titled:

Policy for the EPA's Review and Action on Clean Water Act Program Submittals ("Ross Memo")

Assistant Administrator Fox states that the policies and procedures outlined in the *Ross Memo* have been reconsidered.

The *Ross Memo* addressed EPA review of Clean Water Act actions by state and authorized Tribes including:

- Establishing new or revised water quality standards
- Biennial lists of waters determined to be impaired
- Total Maximum Daily Loads

The *Rescission Memo* takes the position that the policy procedures in the *Ross Memo*:

... weakened the agency's ability to substantively review these submissions while engaging with state co-regulators and authorized Tribes.

Assistant Administrator Fox requires in the *Rescission Memo* that EPA Office Water career senior leaders issue memoranda to restore what is described as "longstanding processes for review of those submissions."

The *Rescission Memo* also addresses a statement in the *Ross Memo* which interprets an aspect of Section 303 (c) of the Clean Water Act. The *Ross Memo* is characterized as requiring the publication of proposed federal water quality standards within 90 days after a state or authorized Tribe fails to remedy an EPA disapproval of any water quality standards.

The *Rescission Memo* states that EPA has reconsidered such interpretation and concludes it is not supported by the Clean Water Act. The agency states in support of this conclusion:

. . . Congress' decision not to set a specific timeframe for EPA to propose federal regulations under section 303(c)(4) . . .

The *Rescission Memo* states as EPA's current position that case-specific circumstances involved in the agency's proposal of federal regulations:

. . . can, and should, inform what constitutes prompt action under this provision.

The Association of Clean Water Administrators ("ACWA") states that it is unaware of a new memorandum regarding Section 303(d). However, it notes a February 4, 2022, memorandum titled:

"Decision-Making Principles for EPA Headquarters' Concurrence on Water Quality Standards Decisions." ("*Nagle Memo*")

The *Nagle Memo* was transmitted from EPA Office of Science and Technology Director Deborah Nagle to Water Directors in the EPA Regions.

The *Nagle Memo* outlines what it describes as five "Decision-making principles." They include:

1. The best available data and evidence indicate that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
2. The EPA Region and Headquarters agree that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
3. The state or authorized tribe recognizes that the WQS is not consistent with the requirements of the CWA and EPA's implementing regulations.
4. Disapproval of the WQS is generally not expected to be controversial or lead to litigation.
5. A corresponding, previously approved WQS provision remains in effect for CWA purposes and/or the state or authorized tribe is actively working on the changes necessary to meet the requirements of the CWA and EPA's implementing regulations such that a protective WQS will be in place absent a federal promulgation.

Copies of the ACWA document and the *Ross* and *Nagle Memos* can be downloaded [here](#).