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U.S. Environmental Protection Agency
EPA Docket Center
EPA-HQ-OA-2018-0259
Mail Code 28221T
1200 Pennsylvania Avenue NW, Washington, DC 20460

Via regulations.gov: Docket ID No. EPA-HQ-OA-2018-0259

RE: Strengthening Transparency in Regulatory Science

The Association of Clean Water Administrators ("ACWA") is the independent, nonpartisan, national organization of state, interstate, and territorial water program managers, who on a daily basis implement the water quality programs of the Clean Water Act ("CWA"). As the primary entities responsible for carrying out CWA programs, states are very interested in any and all national regulatory or policy positions that may impact their ability to implement the CWA in their states.

The stated intent of this rule is to strengthen regulatory transparency of scientific information that the Environmental Protection Agency (EPA) uses for regulatory decision making, and to ensure that the underlying data and models are publicly available in a manner sufficient for independent validation and analysis. ACWA and the states are very supportive of scientific transparency in regulatory development. Unfortunately, the rule is vague in several areas and does not provide specific regulatory language for review and comment.

In the spirit of cooperative federalism, and before the rule is finalized, we ask that EPA host coregulatory discussions that provide more details regarding the intent, scope, and implementation processes associated with this proposal. ACWA believes these discussions will improve the quality of the comments on the rule and will contribute to an enhanced and improved final rule, should this rulemaking go forward. Further, ACWA requests that EPA issue a supplemental notice of proposed rulemaking that includes actual regulatory language. As part of this supplemental notice, ACWA also requests that EPA provide sufficient detail for an analysis of whether this new approach will achieve the results intended, while also continuing to support states efforts to implement the requirements of the CWA.

Questions Not Fully Addressed

ACWA supports use of best available science and the goals of public transparency and independent verification. States also recognize the importance of ensuring data and the models used for regulatory actions,

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provides defensible science for aquatic life and human health be made publicly available, consistent with relevant privacy laws.

In considering this rule, ACWA and states were uncertain of the potential CWA implications. For example, the National Recommended Water Quality Criteria (NRWQC) development, and the state water quality standards established based on these criteria, rely on an extensive number of scientific studies for both aquatic life protections and human health. In what way could this rule affect the use of those studies? Additionally, EPA is currently reviewing and evaluating toxicity data for several perflourinated compounds. These toxicity evaluations and resulting toxicity data are crucial, as most states do not have the resources do this on their own. States have raised questions as to whether implementation of this rule would delay these evaluations or affect the scope of what is evaluated.

Likewise, EPA has historically developed several industry specific effluent guidelines (ELGs) are periodically developed and/or updated. These technology-based standards are intended to represent the greatest pollutant reductions economically achievable for an industry and are incorporated into National Pollutant Discharge Elimination System (NPDES) permits issued by States and EPA regional offices. States raised questions regarding the number of ELGs that qualified as "significant."

During the extended comment period, ACWA was able to confirm with EPA's Office of Water (OW) three rules that met the $100 million "significant impact" threshold set out in the proposed rule in the last ten years:

1. National Primary Drinking Water Rule: Stage 2 Disinfectants and Disinfection Byproducts Final Rule published on January 2, 2006 (71 FR 388-493)

2. Cooling Water Intake Existing Facilities Rule, Final Regulations to Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities (aka CWA Section 316(b)) published on August 15, 2014 (79 FR 48299)

3. Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category published on November 3, 2015 (80 FR 67837)

ACWA was also able to confirm with OW that in looking at all other less significant actions, almost all the information used has traditionally been available to share. EPA was not aware of any national recommended water quality criteria where modeling, science or data could not be shared with states or the public due to privacy issues, or because of intellectual property, confidential business information, security risk, or other potentially justifiable reason. Similarly, all information and data within the NPDES permit applications and permits can be shared, with just a few exceptions. For example, the program office may receive confidential business information from industrial facilities that use proprietary processes and studies, and sometimes there may be an instance where a model used may not be shared due to its proprietary nature. It was also noted by OW that national security related facility information is not shareable.

The proposed rule also raises questions that states believe should be considered before the rule is finalized. These questions include:

1. How would the $100 million economic threshold analysis be implemented? Would new rules be assessed differently than updates to current rules?

2. Where data masking, coding, or de-identification is not technically feasible, will EPA still consider using high quality scientific research?

3. While it appears this rule would only apply prospectively to regulations, would there be any impact to science historically used to inform regulations that have existed for years/decades? How will EPA ensure the science remains timely?

4. If EPA were to phase in the requirements or prioritize certain specific actions, will states have any role in helping identify those priorities?

5. What impact, if any, would this rule have on institutions of higher education, hospitals, and other nonprofit organizations that received EPA funding through grants and cooperative agreements?

Conclusion

Thank you for the opportunity to comment. ACWA and states support regulatory transparency but believe there are still several important questions that should be considered before EPA moves forward. As this rule is developed, ACWA requests that EPA periodically meet with states to share information the agency has learned, and to consider any intended and unintended impacts to state programs. Our members, the directors of state surface water quality programs, possess unique knowledge and insight into those clean water program areas that rely most heavily on data, scientific studies, and models. As with all ACWA comment letters, we encourage the agency to also consider recommendations provided by individual states. If you have any questions regarding this comment letter, please contact ACWA Executive Director Julia Anastasio at janastasio@acwa-us.org or (202) 756-0600.

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