Message

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Sent: 9/3/2019 7:54:52 PM
To: Bouma, Stacey [Bouma.Stacey@epa.gov]; Able, Tony [Able.Tony@epa.gov]
CC: Wetherington, Michele [Wetherington.Michele@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]
Subject: Follow-up on GA Narrative

Tony, Stacey,

Below is from Michele. Let us know if you have any questions.

1. ***Why doesn't the State Supreme Court decision matter?***

The state court case challenging a permit based on EPD's interpretation of the narrative before these revisions were made is docketed in the Georgia Supreme Court but no briefing or oral argument has been scheduled. Either way the Court rules, it would either not affect or bolster the Region's recommendation on this WQS change. If the GA Sup. Ct. affirms the Court of Appeals, they will affirm that a state court found that EPD interpreted its prior narrative appropriately. EPA still has the decision of whether the revision is a change to WQS and is approvable. The analysis for disapproving is not affected. If the GA Sup. Ct. reverses the Court of Appeals, the opinion may address whether the state's interpretation of the prior narrative was appropriate. The Sup. Ct. could hold that EPD did not interpret its prior narrative appropriately and could not include a level of reasonableness in finding interference. EPA's disapproval as a substantive revision would be bolstered through reasoning that a level of reasonableness was therefore a substantive change. Any EPA approval as a non-substantive change would not be supported because the prior interpretation was not correct therefore clarifying it further would not be, too, however a state court does not control EPA's decision on the revision. To the extent EPA will determine the revision to be non-substantive, this Sup. Ct. decision would not support that but not prevent or affect EPA's authority for that.

2. ***Addressing Corey's comments that we do not have any obligation to review non-substantive/non-scientific changes.***

The Region does consider this a scientific/substantive change. However, even if we did not believe it was scientific/substantive, EPA has a duty to review state-adopted WQS pursuant to 40 CFR 131.5 and the definitions in 40 CFR 131.3. EPA's guidance, *What Is a New or Revised Water Quality Standard Under CWA 303(c)(3)?*, states that EPA considers non-substantive edits to existing WQS to constitute new or revised WQS that EPA has the authority and duty to approve or disapprove under CWA section 303(c)(3). While such revisions do not substantively change the meaning or intent of the existing WQS, EPA believes that it is reasonable to treat such non-substantive changes in this manner to ensure public transparency as to which provisions are effective for purposes of the CWA.