Message

From: Bouma, Stacey [Bouma.Stacey@epa.gov]
Sent: 9/30/2020 8:22:54 PM
To: Wetherington, Michele [Wetherington.Michele@epa.gov]; Gordon, Lisa Perras [Gordon.Lisa-Perras@epa.gov]; Able, Tony [Able.Tony@epa.gov]; Cooper, Jamal [cooper.jamal@epa.gov]
Subject: RE: GA Narrative briefing sheet-proposed edits for feedback....

I just caught the regulation misspelling I did too.

Here's how I changed it.

i. GAEPD indicated that the revision adding the phrases "unreasonably" and "designated use of the water body" are a clarification only and not a substantive change in their historical application of the narrative standards; therefore the minimum requirements under 40 C.F.R. 131.6 are not necessary.

1. For the phrase "unreasonably," EPA would rely on GAEPD's characterization rather than review the revisions under the regulations. EPA would not rely on GAEPD's submission and supplemental memorandum regarding the state court case as justification.

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From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Wednesday, September 30, 2020 4:21 PM
To: Bouma, Stacey <Bouma.Stacey@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Subject: RE: GA Narrative briefing sheet-proposed edits for feedback....

Please fix these three typos:

i. GAEPD indicated that the revision adding the phrases "unreasonably" and "designated use of the water body[needs a "] area clarification only and not a substantive change in their historical application of the narrative standards; therefore the minimum requirements under 40 C.F.R. 131.6 are not necessary.

2. EPA would rely on GAEPD's characterization rather than review the revisions under the regulatiosn. EPA would not rely on GAEPD's submission and supplemental memorandum regarding the state court case as justification.

This is tricky with a shortened briefing sheet, because the state did submit both as clarifications only, but we've pulled out the DU change to treat it as substantive in both option 1 and 2. While it's correct that the state indicated it for both sets of revisions, we do have the first bullet treating the DU change with a reg review. So I think we should take it back out of the second one. We've never really presented the option of approving the DU revisions without going through the reg review.

Thanks,

Michele

From: Bouma, Stacey <Bouma.Stacey@epa.gov>
Sent: Wednesday, September 30, 2020 4:08 PM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Wetherington, Michele <Wetherington.Michele@epa.gov>;

Able, Tony <Able.Tony@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
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I think the issue is that you added "designated use" into the second bullet rationale. If that's deleted it should be fine with the focus on "unreasonably" like it was originally. I'm trying to understand why you added "designated use" in this second bullet. It creates confusion.

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From: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Sent: Wednesday, September 30, 2020 4:03 PM
To: Wetherington, Michele <Wetherington.Michele@epa.gov>; Able, Tony <Able.Tony@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
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I'm fine with the revision you made on iii now that you clarified – so no changes need to be made there for me. If you would just make sure the other part you mentioned is good, then I'm good. I need no further revisions.

From: Wetherington, Michele <Wetherington.Michele@epa.gov>
Sent: Wednesday, September 30, 2020 4:00 PM
To: Able, Tony <Able.Tony@epa.gov>; Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
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If that is changed, I would suggest also changing the Rationale first bullet above that one to match. That first one currently has a subparagraph 1 as well to explain the rationale. The point in the subparagraph contrasts with the first subparagraph above, where we describe how it meets our regs. For the second one, we aren't relying on regs, just the state's characterization.

Thanks,

Michele

From: Able, Tony <Able.Tony@epa.gov>
Sent: Wednesday, September 30, 2020 2:46 PM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: RE: GA Narrative briefing sheet-proposed edits for feedback....

JMG may want, "*EPA would not rely on GAEPD's submission and supplemental memorandum regarding the state court case as justification*", to go under clarification rather than rationale. We can ask tomorrow morning but I do think it is something that needs to be made clear during the briefing on Friday.

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From: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>
Sent: Wednesday, September 30, 2020 2:08 PM
To: Able, Tony <Able.Tony@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>
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Tony/Stacey,

Attached please find a link to our recommendations. Overall, we are recommending less changes than suggested. We accept the change from editorial to substantive to be more in line with the State's language. However, that change does not in any way affect the rest of the language. Those two things are basically interchangeable and neither appear in the regulations. We request that the portions of the Rationale and Considerations that were deleted be restored as key arguments. If we are going to proceed with including approval as non-substantive as an option, then the rationale and considerations at a minimum should be provided as in the brief sheet that Jeaneanne wrote. They are as follows:

- We are asking for the removed information to remain for the regulatory provision under Rationale sub-bullet ii. The basis for the rationale is not clear without that language. Jeaneanne originally did not include it in the Brief Sheet that she wrote after rejecting our brief sheet. When given the time to review, I asked to put it in and she accepted that change. Leaving it in is less change from her version and she was okay with it.
- We are asking for the removed information to remain for the Considerations under original sub-bullets ii and iii. Removing those considerations significantly removes the considerations that are essential. Jeaneanne agreed to keep those in the Brief Sheet that she wrote. Leaving it in is less change from her version and she was okay with it.

We made just a few other changes. They don't vary significantly from the briefing sheet that Jeaneanne wrote. Would you let us know if the attached changes are acceptable?

Thank you. Lisa

From: Able, Tony <Able.Tony@epa.gov>
Sent: Wednesday, September 30, 2020 10:42 AM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Bouma, Stacey <Bouma.Stacey@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>
Subject: RE: GA Narrative briefing sheet-proposed edits for feedback....

Thanks Lisa. Remember to keep the changes brief. JMG will need to relay to Mary what changed before we have the call with OW.

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Sent: Wednesday, September 30, 2020 10:39 AM
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Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>; Able, Tony <Able.Tony@epa.gov>
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Stacey, Tony,

I appreciate your help in trying to revise the briefing sheet to be more accurate to address the concerns I've raised. In particular, I appreciate removal of the word 'editorial' from the review. Jamal, Michele and I will look at it and send it back with suggested revisions. The revision will ensure that it is directly tracking with the phrasing used by the state. We can provide references for each change, as needed. One additional revision will be to include the regulatory citations that were included, as they must be addressed in any of the options and cannot be removed. We'll send back our comments with explanation. Once you see them, let us know if you'd like to meet to discuss. Will do them quickly.

Also, the analysis on the Memo has been completed. Will send a link.

Thanks, Lisa

From: Bouma, Stacey <Bouma.Stacey@epa.gov>
Sent: Wednesday, September 30, 2020 9:51 AM
To: Gordon, Lisa Perras <Gordon.Lisa-Perras@epa.gov>; Cooper, Jamal <cooper.jamal@epa.gov>
Cc: Wetherington, Michele <Wetherington.Michele@epa.gov>; Able, Tony <Able.Tony@epa.gov>
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Lisa/Jamal,

Here is what Tony and I are proposing to send to Jeaneanne concerning edits to option 2. We are trying to minimize changes to the original briefing sheet the RA has already received. Provide feedback as needed to ensure revisions are providing accurate information.

We thought it would be better to keep the work you are doing now as relates to the policy memo as a separate document that can be used for the discussion with the OW Policy Counsel. At the 8am meeting Thursday we can ask Jeaneanne her preference for what is provided to OW (and OGC).

Thanks,
Stacey

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