

May 2017

**COMMENTS ON U.S. ENVIRONMENTAL PROTECTION AGENCY
EVALUATION OF EXISTING REGULATIONS
DOCKET ID NO. EPA-HQ-OA 2017-0190**

The “Review of Existing Regulations” is asking the wrong questions.

Clean Water Action and Clean Water Fund strongly object to the premise behind Executive Order 13777 and the U.S. Environmental Protection Agency (EPA) “Review of Existing Regulations.” Regulations, including environmental and health protections, are not holding back our country. On the contrary, regulations that protect our water, air and health are some of the most powerful driving forces for our economy and our communities. Whether it is water for drinking, fishing, swimming, boating, irrigation, food production, brewing or other industries, clean water is the essential input. It is the foundation of healthy communities.

Benefits of environmental and public health protections outweigh costs and are often under-counted.

The benefits of environmental and health regulations have repeatedly been shown to far outweigh the costs. For any regulation under review, EPA must quantify all the benefits, not just the costs. A 2013 Office of Management and Budget study found that benefits of regulations far outweighed costs across numerous agencies. For EPA regulations, though, the benefits were most striking. Over the preceding decade, the benefits of EPA regulations were as high as \$600 billion and only cost the economy as much as \$45 billion.

The return on investment for protecting drinking water sources is even greater. According to EPA’s own website, every \$1 spent protecting a drinking water source results in a savings of up to \$27 on water treatment. Preventing pollution is always more cost effective than cleaning it up or dealing with its negative impacts. EPA’s own pollution prevention policy dictates that it must prioritize drinking water protection. Since 1980, it has been EPA’s policy as part of its human health criteria, not to pass on the burden of water pollution to drinking water users and the providers who are responsible for complying with the Safe Drinking Water Act and for treatment. The Agency must preserve regulations that positively impact drinking water quality both at the tap and at the source. EPA is not currently considering all of the benefits of regulations. For

example, rules promulgated in Clean Water Act programs do not adequately quantify the benefits of water pollution controls in terms of avoided public health risks in drinking water and avoided drinking water treatment costs. As noted in comments by Clean Water Action and the Environmental Integrity Project in 2013, EPA did not monetize health benefits from cleaner drinking water or reduced drinking water treatment costs in development of Clean Water Act pollution limits for the steam electric sector.¹ EPA should invest in economic research to support quantifying drinking water benefits of upstream pollution controls.

Rolling back protections can conflict with EPA statutory obligations and strategic initiatives.

EPA must ensure that any weakening of protections in one program does not result in impacts on statutory obligations or regulations. Safe Drinking Water Act (SDWA) programs and drinking water impacts offer a good example of this potential.

In both the 2010 *Drinking Water Strategy* and the 2016 *Drinking Water Action Plan*, EPA emphasizes the need to use existing authorities in other programs to protect drinking water sources, prevent drinking water contamination, and prevent the transfer of burden to drinking water systems and their ratepayers in order to comply with SDWA regulations. EPA has made progress in this area, including in integration of the Clean Water Act and the Safe Drinking Water Act. Continuing to ensure that pollution burdens are not passed downstream is a commonsense and cost effective approach and should be of paramount consideration when reviewing regulations in any program.

COMMENTS ON SELECTED SPECIFIC REGULATIONS – OFFICE OF WATER

Clean Water Act - Clean Water Rule: Definition of Waters of the United States

The Clean Water Rule protects millions of acres of wetlands that filter pollutants, provide habitat for fish and wildlife, and absorb floodwaters. Headwater and intermittent streams that are currently vulnerable protect the drinking water sources for 1 in 3 Americans. These are vital parts of our nation's water infrastructure, currently vulnerable to pollution and destruction. .

The Clean Water Rule does not regulate land or create any new permitting requirements. The Rule makes it easier for businesses and individuals to know what waters are protected by the Clean Water Act and what waters aren't. The only reason a person or business would ever be concerned about the Clean Water Rule is if they intend to pollute or destroy a federally protected river, stream, wetland or other surface water resource.

Revoking the Clean Water Rule and proposing a new approach is an unnecessary waste of EPA funds and staff effort. EPA took years to craft the rule, held more than 400

meetings with stakeholders, and received more than a million public comments, most of which were in support of the Rule. A thorough review of the current science of water, [*Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence*](#)ⁱⁱ amply demonstrates the justification and need for the water protections outlined in the Clean Water Rule.

The Clean Water Rule clarified confusion, is supported by a majority of public, and protects the drinking water sources for at least 117 million people. It is supported by many municipalities that require unpolluted drinking water sources and natural infrastructure like wetlands to filter pollutants and absorb floodwaters. Small businesses that rely on clean water and healthy wildlife habitats like breweries and outdoor recreation companies also strongly supported the Clean Water Rule.

The vulnerabilities addressed by the Clean Water Rule affect drinking water sources nationwide. Leaving the streams, wetlands, and other water bodies at issue in the Clean Water Rule vulnerable to pollution and destruction has concrete impacts on water quality downstream and on drinking water sources. This will lead to public health risks in drinking water and to increased treatment costs, a burden that will be passed on to drinking water utilities and their ratepayers.ⁱⁱⁱ

Clean Water Act Effluent Limitations and Guidelines for the Steam Electric Sector

In 2015, EPA revised outdated water pollution standards for the power plant sector. These Clean Water Act Effluent Limitations and Guidelines, (ELGs) had not been updated since 1982. Power plants, in particular coal-fired plants, have contaminated 23,000 miles of rivers and streams across the country.

EPA has announced its intent to review these critical water pollution limits. In addition to delaying compliance deadlines and issuing an administrative stay of the 2015 rule, EPA also successfully moved, over opposition from environmental organizations and drinking water associations, the 5th Circuit Court of Appeals to suspend judicial review of the 2015 rule for at least 120 days while EPA begins its reconsideration of the rule.

EPA's failure to provide the public an opportunity to comment on its decision to delay compliance deadlines and reconsider these pollution safeguards is reckless and dangerous. The facts and science have not changed – power plants continue to dump toxic pollution into our nation's waters, including hundreds of water bodies that are critical drinking water sources.

Power plants have been treating our water bodies like an open sewer. Every year, these plants dump 2.2 billion pounds of contaminated wastewater directly into our rivers, lakes and bays – that's over 250,000 pounds of pollution an hour. The power plant sector is by far the largest toxic water polluter in the country, responsible for 30% of all toxic pollutants discharged into surface waters by all industrial water polluters regulated under the Clean Water Act.

For decades power plants have passed the cost and burden of cleaning up their toxic mess onto downstream communities and residents. Wastewater from coal plants contains a toxic mess of heavy metals, arsenic, nutrients and other contaminants that are known to be harmful to humans and aquatic life. Exposure to these toxic chemicals through swimming in or drinking contaminated water or through eating contaminated fish can cause skin lesions, birth defects, cancer, and other health problems. The power plant water pollution rule is a vital step toward reducing this pollution and protecting public health. Undoing this rule will put communities near coal-fired power plants at risk.

Because of uncontrolled power plant water pollution:

- It is unsafe to drink or eat fish from at least 94 water bodies across the country.
- 45% of waterways that receive coal plant wastewater are contaminated with high levels of heavy metals or other harmful pollutants.
- 23,000 miles of rivers and streams are contaminated because of these discharges, including water bodies used as drinking water sources. *Nearly 35% of all coal plants discharge toxic pollution within 5 miles of a downstream community's drinking water intake and 81% of all coal plants discharge within 5 miles of a public drinking water well.*
- Toxic chemicals in coal plant wastewater such as mercury, lead, and arsenic can cause cancer and other health problems.
- These chemicals concentrate up the food chain resulting in long-term damage to aquatic ecosystems.
- Public Water System (PWS) customers may face higher bills because PWS must clean up this mess before delivering drinking water to residents. The Steam Electric ELGs recognized the challenges posed by bromide, which can interact with treatment chemicals in drinking water plants and lead to formation of health-threatening disinfection byproducts.^{iv}

The Clean Water Act requires EPA to update pollution limits for industrial sectors discharging into our nation's water bodies. Affordable technologies exist today that can eliminate nearly all of this pollution from the power plant sector. Strong standards to limit all power plant water pollution will improve the health of rivers and streams, making the water we drink and the fish we eat safer. The Steam Electric ELGs is a step in the right direction and reconsidering the rule could set pollution prevention back by decades.

Clean Water Act - National Pollution Discharge Elimination System

EPA has already undertaken to improve consistency and transparency in the Clean Water Act water pollution permit program. We support the 2017 proposed *National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates*. These updates are needed to modernize the NPDES program and to address the significant backlog of 17,000 expired permits. Strong and consistent NPDES

requirements are essential to meeting the original intent of the Clean Water Act to ultimately eliminate water pollution in order to “restore and maintain the physical, chemical and biological integrity of the Nation’s waters.” Discharge permits are required to be updated every five years, but at least 25% of all major NPDES permits are expired. Regular renewal of permits is necessary to ensure that new effluent limits, water quality standards, and changes in receiving water conditions are considered in order to update permit terms and conditions in a timely manner.

Clean Water Act Effluent Limitations and Guidelines for Unconventional Oil and Gas Extraction Category – Pre-treatment Standards for Oil and Gas Wastewater to Publicly Owned Treatment Works

We strongly support Clean Water Act Effluent Limitations and Guidelines oil and gas wastewater discharges to sewage treatment plants. This rule is a common sense step to protect communities and drinking water downstream from oil and gas wastewater by avoiding sending complex oil and gas production wastewater streams to sewage treatment plants that were not designed to handle such industrial waste. Clean Water Act programs and drinking water protections need to evolve along with industry practices and this rule strikes an appropriate balance. The rule protects drinking water at zero cost and includes an extended deadline of compliance for operators who requested it.

Safe Drinking Water Act National Primary Drinking Water Regulations

The Safe Drinking Water Act (SDWA) prohibits revision of any National Primary Drinking Water Regulation (NPDWR) that would lead to decreased public health protection. The SDWA Six Year Review process is a built-in review of all NPDWRs. EPA must review regulations on a six year cycle and determine whether new health effects or occurrence data, technological information, or other factors suggest revision may be needed. EPA is currently in the middle of the third Six Year Review cycle. It is critical that EPA has the resources to follow-up on the regulations identified for further investigation in the third Six Year Review.

Safe Drinking Water Act Underground Injection Control Program

The Underground Injection Control Program (UIC) is part of the 1974 Safe Drinking Water Act and has the statutory mandate of protecting underground sources of drinking water from injection practices. EPA should not weaken these programs, which currently are dramatically underfunded. Funding for the UIC program has been stagnant for decades, despite increased numbers of wells being drilled including in the Class II program which handles oil and gas activities. In order to protect drinking water from the continued expansion of oil and gas development it is imperative to fund this program at increased levels. The program also must be able to provide enough grant funds to state programs so these states can carry out program requirements and protect underground drinking water resources.

It is likely that any review of UIC programs, including the Class II program overseeing oil and gas injection activities, would reveal a need to update protections and modernize oversight of injection activities. For example, EPA should review whether the Aquifer Exemption program, which our investigations have revealed is not being implemented properly in at least several states, is out of date and does not reflect current industry practices or drinking water realities.

ⁱ [Critique of EPA's Failure to Quantify and Monetize Health and Economic Benefits of Cleaner Source and Drinking Water Gained From the Steam Electric Generating Point Source Category Rulemaking](#), Comments to docket, Jennifer Duggan & Lynn Thorp, September 19, 2013;

<http://www.cleanwateraction.org/comments-steam> electric ELGs drinking water benefits

ⁱⁱ [Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence](#), U.S. Environmental Protection Agency, January 2015;

<https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414>

ⁱⁱⁱ [Putting Drinking Water First: The Definition of Waters of the United States Under the Clean Water Act](#), Clean Water Action/Clean Water Fund, 2017; <http://www.cleanwateraction.org/publications/putting-drinking-water-first-clean-water-rule>

^{iv} [Putting Drinking Water First: Time to Curb Power Plants' Toxic Pollution, Clean Water Action, 2013](#); <http://www.cleanwateraction.org/publications/put-drinking-water-first-time-curb-power-plants-toxic-pollution>