



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

February 4, 2022

MEMORANDUM

SUBJECT: Rescission of Memorandum Titled: “Policy for the EPA’s Review and Action on Clean Water Act Program Submittals”

FROM: Radhika Fox
Assistant Administrator

A handwritten signature in black ink, appearing to be "R. Fox", is written over the name and title of the sender.

TO: Regional Administrators, Regions 1-10

On June 3, 2019, the U.S. Environmental Protection Agency’s (EPA) Office of Water issued a memorandum titled, “Policy for the EPA’s Review and Action on Clean Water Act Program Submittals,” which was addressed to and directed at EPA Regional Administrators and spoke to internal agency policies and procedures. EPA has reconsidered these policies and procedures and hereby rescinds the June 3, 2019 Memorandum.

I have asked the Office Directors from the Office of Science and Technology and the Office of Wetlands, Oceans and Watersheds to issue memos to the EPA Regions that document their review processes under Sections 303(c) and 303(d) of the Clean Water Act, including techniques for streamlining and improving those processes. This approach will better reflect the Office of Water’s commitment to communications and coordination between headquarters and its regional partners on Clean Water Act Sections 303(c) and 303(d) actions.

The June 3, 2019 Memorandum included a statement that, for purposes of internal agency procedures, EPA would interpret Section 303(c) of the Clean Water Act as requiring the proposal of federal standards within 90 days after a state or authorized tribe fails to remedy an EPA disapproval decision under this provision. EPA has reconsidered this interpretation and concludes that is not supported by the Act.¹ In light of Congress’ decision not to set a specific timeframe for EPA to propose federal regulations under Section 303(c)(4), EPA’s current view is that case-specific circumstances involved in EPA’s proposal of federal regulations can, and should, inform what constitutes prompt action under this provision.

¹ Specifically, Section 303(c)(4) does not contain a timeline for EPA to publish proposed regulations if a state or authorized tribe does not remedy an EPA disapproval. While EPA must act without undue delay, Congress’ use of the term “promptly” pointedly contrasts with other provisions in Section 303(c) that set forth specific deadlines. For this reason, when courts have had occasion to examine this provision, even when otherwise critical of EPA inaction, they have repeatedly declined to establish a bright-line rule regarding how quickly EPA must publish proposed regulations and have instead adopted a more flexible, case-specific analysis. See, e.g., *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1350 (D. Ariz. 1995) (“[T]his Court declines to specify an exact time limit to define EPA’s duty to act ‘promptly....’”); *Raymond Proffitt Found. v. U.S. E.P.A.*, 930 F. Supp. 1088, 1099 (E.D. Pa. 1996) (“The court does not know exactly what Congress meant by ‘promptly.’”).