



June 7, 2019

The Honorable Andrew Wheeler  
Administrator  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW  
Washington D.C. 20460

*Submitted to <https://www.regulations.gov>*

**RE: Interpretive Statement on Application of the Clean Water Act National Pollutant Discharge Elimination System Program to Releases of Pollutants from a Point Source to Groundwater (Docket ID No. EPA-HQ-OW-2019-0166)**

Dear Administrator Wheeler:

The National Tribal Water Council (NTWC) urges EPA to withdraw its interpretive statement that exempts point source pollution discharges through groundwater to surface water from Clean Water Act (CWA) protections. The statement issued by the agency on April 15, 2019 completely reverses the agency's well-supported position on applying the CWA in the past and will create a dangerous new loophole in the Act. Moreover, it fully disregards the scientific basis for the agency's original and correct interpretation for case-specific application of NPDES permitting requirements for discharges to ground water with direct hydrologic connection to surface waters. Finally, it creates fundamental inconsistencies across the nation in how the federal protections under the CWA are implemented. This is not "flexibility"; this is a renunciation of the clear intent of Congress to provide for improvements in water quality and protection of the nation's vital water resources.

The NTWC reiterates the concerns we shared last year when the agency requested comments on this CWA permitting policy:

- We fully support EPA's prior statements finding that point source discharges to groundwater with direct hydrologic connection to surface water require a NPDES permit.
- The NTWC has clearly communicated our values regarding water resources as precious, sacred, and in need of strong regulatory protection.

- We fully support EPA's review and synthesis of research related to the connectivity of streams and wetlands to downstream waters and the unequivocal peer-reviewed scientific evidence for the linkage of groundwater and surface water systems.
- We offered examples of three types of facilities (mine sites, wastewater treatment plants, and coal combustion residual storage and disposal) where this policy is crucial for the agency and authorized states and tribes to effectively implement CWA protections for adjacent surface waters.
- We emphasized the importance of EPA's original policy for protecting subsistence harvesting, consistent with the agency's trust responsibilities.
- We pointed to the clear language in CWA §102(a) that specifically recognizes groundwater in its directive to EPA, and in CWA §402(b)(1)(D) that clearly recognizes that discharge of pollutants into wells can adversely affect surface water, thereby triggering NPDES requirements.

It is abundantly clear to the NTWC that Congress never intended to exclude point source discharges to groundwater from CWA protections, and multiple court decisions over the years have approved EPA's longstanding, science-based, case-by-case approach to regulating those discharges. The agency's new interpretive statement, an abrupt reversal, also specifically excludes vast regions of the nation (served by the Fourth and Ninth Circuit Courts of Appeals), which in and of itself will lead to regulatory confusion and uncertainty – but certainly legal challenges. It totally disregards the fact that there are existing permits across the nation that already require limits on pollutants that travel through groundwater before reaching surface waters. It is unfathomable to the Council how this change in CWA policy will protect the environment or human health; neither the Safe Drinking Water Act nor the Resource Conservation and Recovery Act provide the same broad-ranging safeguards for the multiple beneficial uses that our lakes, streams and wetlands support.

The NTWC believes that the new interpretive statement violates the clear requirements of the CWA, and fails on every level to protect the nation's water resources. We urge the agency to withdraw this scientifically unsupported policy, and reinstate the previous approach which not only recognizes the need, and Congress's intent, for protecting our waters, but also affords the necessary and appropriate regulatory tool for doing so.

Sincerely yours,



Ken Norton, Chairman  
National Tribal Water Council

Cc: Assistant Administrator David Ross, EPA Office of Water  
Karen Gude, EPA Office of Water