



May 15, 2017

Samantha K. Dravis
 Regulatory Reform Officer
 Association Administrator, Office of Policy
 U.S. Environmental Protection Agency
 1200 Pennsylvania Avenue N.W.
 Washington, DC 20460

RE: Comments on Executive Order 13777 on Enforcing the Regulatory Reform Agenda; Docket ID EPA-HQ-OA-2017-0190

Dear Ms. Dravis:

These comments are being submitted on behalf of the State of Wisconsin in response to the U.S. Environmental Protection Agency’s (EPA) request for comments pertaining to President Trump’s Executive Order 13777: *Enforcing the Regulatory Reform Agenda*. We greatly appreciate this effort to review existing regulations and the opportunity to provide these comments.

Our specific comments are provided below. Please note that while some of these items pertain to particular regulations, these comments also include items relating to the dual roles that Wisconsin and EPA have in regard to environmental regulation. States as implementers of federally delegated environmental programs are in a unique position to understand the challenges with implementing the programs on the ground.

Title/Short Description	Item Description
Issue an executive order on coordination with states	DNR wants the states' constitutional role in administering laws, solving problems, and serving people.
Tribal regulation of water and air quality reform	<p>Tribes have the ability to create their own air and water regulatory standards under the Clean Water and Clean Air Acts. In addition to applying to businesses on reservation lands, these standards also apply to businesses’ discharges, or emissions, that potentially impact water or air quality on reservations. These standards are in addition to any applicable state or federal standards. Overlaying another regulatory layer on top of existing state and federal regulations, which are designed to protect public health and the environment, discourages economic growth in these geographic areas.</p> <p>While the Clean Water and Air Acts could be amended in a number of different ways to address this duplicative regulatory structure, there are also a number of actions that could be taken administratively. EPA has recently changed its interpretation of the Clean Water Act “treatment as a</p>

	<p>state” provisions to make it easier for tribes to establish water quality standards. In addition, EPA has also proposed to create water quality standards for tribes that have not adopted standards. EPA could return to its longstanding, original interpretation of the Clean Water Act “treatment as a state” provisions. It could also stop its efforts to impose additional water quality standards on sovereign nations.</p>
<p>Require EPA to defer to state permit decisions for delegated programs</p>	<p>EPA should defer to state decision-making in regard to programs delegated to the state (e.g., Clean Air Act, Clean Water Act) except in extreme circumstances. Second-guessing state permitting decisions creates regulatory uncertainty and stifles investment. For example, after being asked for input, EPA questioned a state permitting decision made eight years earlier as a permit was coming up for renewal. This type of approach results in businesses not being able to rely on permitting decisions made by state entities that have met the requirements and been approved by EPA to implement these federal programs. In the event there is a disagreement, a change should be addressed prospectively and not in the context of revisiting past decisions.</p>
<p>Revising the Clean Air Act's National Ambient Air Quality Standards (NAAQS) and Permitting Problems</p>	<p>Pursuant to the Clean Air Act, EPA is required to establish NAAQS for pollutants considered harmful to public health and the environment. EPA designates geographic areas as either meeting those standards (“attainment areas”), not meeting those standards (“nonattainment areas”), or as not having enough information to designate as attainment or nonattainment areas (“unclassifiable areas”).</p> <p>Wisconsin has nonattainment areas and will probably have them in the future as standards are continually revised and often tightened. Because regulations apply in these areas that do not apply elsewhere, manufacturing may be discouraged from investing in those areas. In addition, because Wisconsin nonattainment areas are largely caused by emissions occurring outside those areas, applying requirements inside the nonattainment areas often will not result in the areas meeting the standards.</p> <p>Recommendations for consideration to address some of the challenges include:</p> <ul style="list-style-type: none"> ▪ Fairly address ozone air transport issues. The Clean Air Act requires an area that exceeds a NAAQS to implement requirements to bring the area into attainment, even though the area may not be the source of emissions causing the violation (e.g., Sheboygan and Kenosha Counties, WI). ▪ Nonattainment areas should not be required to implement controls when emissions in the nonattainment areas are not the primary cause of the air quality problems. Modify the Clean Air Act to provide that revisions of the NAAQS are not required every five years. This timeframe is simply too short, and results in overlapping regulatory standards. ▪ Speed up the process to re-designate nonattainment areas that now

	<p>meet the NAAQS to attainment areas. Allow for the concept of emission offsets to be used in attainment areas.</p> <ul style="list-style-type: none"> ▪ Allow projects in attainment areas to move forward once appropriate control technologies are implemented or offsets obtained, even if modeling does not demonstrate compliance with the NAAQS. ▪ In attainment areas, provide states with the flexibility in determining when modeling is necessary to determine compliance with a NAAQS. Allow modeling to be based on “most likely” or actual scenarios rather than “worst case” or potential scenarios, while still protecting public health.
EPA Program Review	<p>For environmental programs delegated to the states by EPA, EPA frequently will opine on whether a certain practice, rule or statute adopted by the state is consistent with federal requirements. If not, EPA will require the state to change the practice, statute or rule to be consistent with federal law. In many instances, the changes required by EPA have no, or a nominal impact, on how the state is implementing a specific regulatory program.</p> <p>In these instances, the state usually communicates with EPA to ensure agreement the proposal will address EPA’s concern. This is important because of the effort that goes into addressing EPA’s concerns can be substantial. For example, addressing these concerns can require the state to embark on a multi-year rulemaking process. There have been a number of instances in which the state thought it was addressing the concern, after receiving feedback from EPA, only to find out later that it had not. This results in the state having to embark in another effort to address the issue.</p> <p>In order to address this issue, there should be a new, formal process by which states can request EPA to make a determination as to whether a proposal meets federal requirements. EPA should be required to respond within certain a time period, such as within 90 days of receipt of the proposal. EPA should also be required to explain what specific parts of the proposal does not meet federal requirements, and explain in detail why the proposal does not meet requirements.</p> <p>If EPA approves a proposal, it should be bound by that determination unless there is a federal law change (rule, statutory, court decision) that makes its determination no longer valid.</p>
Ten Year Permits	<p>The Clean Water Act specifically restricts water discharge permits to five years in duration. Many permits, upon renewal, are simply a continuation of the existing permit. In order to minimize workload while continuing to protect the environment, revise the Clean Water Act to provide that permits may be for ten years in duration. If, during the ten year period, a significant change is warranted, (e.g., the facility wishes to significantly</p>

	<p>increase capacity or a new water quality standard is adopted), permits can be modified at that time. An alternative could be to allow 5 year extension options to permits instead of going through the full reissuance process as long as the permittee is in compliance and has no significant changes.</p>
<p>Significant inconsistency in regulatory approach between EPA regional offices</p>	<p>In EPA's current structure of an agency headquarters and ten regions, there appears to be a substantial amount of inconsistency with regard to implementing federal rule and law, federal guidance, enforcement, and approach to working with state agencies. This diffused organizational structure contributes to this inconsistency given that it appears that EPA Regional Directors and staff have a fair amount of autonomy within their regions.</p> <p>The effect of this inconsistency is that from an implementation perspective there are eleven EPA's. The result at the state level is the actual intent of federal rule, law, enforcement, and policy direction not being uniformly applied, which creates an uneven playing field for both businesses and states.</p> <p>One option to address this issue is to re-organize EPA to a "line organization" in which all programmatic staff and supervisors in the regions report to a Program Director and management staff in EPA headquarters. Under this organizational structure, Regional Directors could focus on leading collaborative and innovative efforts with the states, leading significant projects and issues within their geographic areas, helping ensure that EPA programs are taking an integrated approach to regulation, and providing input on the feasibility of implementing rules and guidance.</p>
<p>Require EPA to allow states greater flexibility to customize programs to fit states' needs</p>	<p>States have a better idea about how to administer environmental programs in their states. The EPA role should be to provide general sideboards (since air and water do cross state lines) but allow states greater flexibility to customize their programs to fit their needs – without constant federal approvals.</p> <p>EPA has a role to set overall performance standards for clean water and air, but states establish the details about how to accomplish them. EPA's approval role is limited to determining consistency with a broad standard. A model could be how NRCS develops technical standards – a broad set of standards and topic areas to be addressed are identified at the national level, while states are allowed to fill in the details.</p>

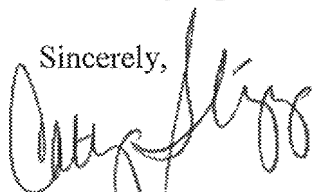
<p>Require EPA to consult with states on their needs to produce a scientific strategy on water quality indicators and other matters.</p>	<p>EPA could play a more active role in developing a scientific basis for actions based on state needs and feedback. An example is the decision on which bacteria species to base water quality standards. For many years it was fecal coliform, then EPA switched it to E. coli, and then it was a bacillus species. EPA then decided to study it further and there was no indicator species established. Eighty years later, after no progress, EPA went back to E. coli. It is recommended that EPA consult states as to their needs and establish a science strategy in consultation and collaboration with state programs.</p>
<p>Revise the Clean Water Act's grant dollars to states (s. 319)</p>	<p>Clean Water Act s. 319 grant dollars to states are restricted to be used for nonpoint source pollution abatement projects and further restricted to be used only in watersheds with specified plans (Nine Key Element) approved by EPA. Revise the Clean Water Act to allow greater flexibility in the use of these funds to include nonpoint-based pollution in permitted municipalities (storm water) and certain activities at CAFOS. Revise federal regulations to remove the restrictions that these funds may only be used in watersheds with approved "Nine Key Element" plans. It is recommended to reduce the plan requirements, state programs could use these funds based on the greatest environmental need and/or outcome, rather than if there is an approved, complicated plan.</p>
<p>Lack of Timely Responses for EPA</p>	<p>EPA must approve many state actions under the Clean Water Act such as administrative rules related to CWA implementation and permit variances. Often there are significant delays to obtain these approvals. For example, the multi-discharger variance request was submitted to EPA on March 30, 2016 and the approval decision took almost 12 months. This has delayed numerous permit issuances, caused confusion and uncertainty for stakeholders and added cost. Another timeliness concern relates to when EPA fails to provide timely guidance on major regulatory requirements, particularly when states are required to meet federal deadlines. One option to address this issue is to require federal agencies by statute or rule to approve certain state actions within a date certain unless an extension is mutually agreed to by the state. Failure to meet the deadline results in approval of the action.</p> <p>Another approach would be to establish metrics that require certain timeframes to be met, include corresponding performance objectives, and hold people accountable for missing deadlines.</p>
<p>Coordinate the timeline of federal regulation dates</p>	<p>The states are constantly commenting and implementing new federal rules and sometimes they can interact and affect other rules. The federal government should better coordinate when rules are released and how they affect other ones.</p> <p>In order to ensure coordination of rules, and to provide some certainty to the regulated community:</p> <ul style="list-style-type: none"> ▪ Any new rules should take into account the timing and impact of other existing or proposed rules. For example,

	<p>any new air quality rule proposals should include an analysis of other existing and proposed rules that may impact emissions that will also be regulated under the new rule, and issuance of these rules should be carefully coordinated so as to be issued contemporaneously.</p> <ul style="list-style-type: none"> ▪ Companies should be ensured that, when they make investments in control technologies, that investment will be sufficient to meet regulatory requirements for a defined period of time. ▪ EPA needs to provide adequate implementation timelines for new requirements.
Same Project/Different Programs	<p>Different programs in a federal agency will pursue the same project with different programs at the state. This results in duplication, confusion and inconsistency. <i>Example:</i> FEMA is pursuing a floodplain mitigation strategy development project. FEMA’s mapping section has directed our mapping program to develop it, FEMA’s floodplain program has directed our floodplain program to develop it, and FEMA’s emergency management section has directed our emergency management program to develop it. Require federal agencies to have a multi-discipline project coordination team so that different programs within these large agencies have a better idea of what the other is doing – especially for major and expensive initiatives.</p>
Require federal agencies to consult with states as an integral partner in establishing national environmental policy	<p>Federal environmental regulations are often established without adequate state involvement or input. An example is the WOTUS rule. Require federal agencies to offer a consultation role to states as an integral partner in establishing national environmental policy. In the WOTUS rule example, states were not consulted at all in its development. Had we been included, we could have informed EPA of the ramifications of their approach and worked with EPA to address many of the current concerns and perhaps had a workable rule, avoiding much of the controversy and legal time and cost.</p>
Reclassification of the Sheboygan, WI to moderate nonattainment for the 2008 ozone standard (81 FR 91841)	<p>WDNR’s comments of October 28, 2016 on EPA’s proposed rule gave numerous reasons why EPA should not take this final action, which changed Sheboygan’s classification from “marginal” to the stringent “moderate” classification, for failure to attain the 2008 ozone standard. As described in those comments, Sheboygan County’s air quality is heavily impacted by the emissions originating from out of state. Wisconsin has already taken a wide range of actions to improve the air quality in Sheboygan County. Recent modeling conducted by the Lake Michigan Air Directors Consortium (LADCO) showed that, even if all manmade sources of ozone-causing precursors were eliminated within the county, the ozone design values at the Sheboygan Kohler-Andrae monitor would not change. Therefore, any additional emissions reductions resulting from this reclassification would have no impact on air quality and would not help achieve attainment. Given the lack of any demonstrated air quality benefit, EPA should repeal this final rule.</p>

2015 changes to length of ozone season	WDNR's comments of March 17, 2015 on the proposed rule described the Department's significant concerns with the proposed change of the ozone monitoring season. This change is unsupported by data and fails to appreciate the logistical challenges to starting up monitoring sites in mid-winter in the upper Midwest. EPA should repeal this change in the final rule so that Wisconsin's ozone monitoring season reverts to its original April 15 start date.
Start-up, Shutdown and Malfunction (SSM) exception for air emissions	EPA has challenged a number of states' SSM rule provisions, and has indicated it wants Wisconsin to eliminate its SSM provisions. SSM provisions are important because they recognize abnormal circumstances when emissions may vary from emissions during normal operations. WDNR strongly disagrees with EPA's legal and technical rationale for taking this action and does not agree that changes to state rules should be required.

Thank you for your consideration of these comments, and we look forward to continuing to engage with EPA to identify and implement changes to reform and streamline our dual regulatory structure, while continuing to protect the health of Wisconsin's citizens and the environment.

Sincerely,



Cathy Stepp,
Secretary