

August 13, 2018

Andrew Wheeler
Acting Administrator
U.S. Environmental Protection Agency
USEPA Headquarters
William Jefferson Clinton Building
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: EPA's Advance Notice of Proposed Rulemaking: Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process (EPA-HQ-OA-2018-0107)

Dear Acting Administrator Wheeler:

The National Association of Clean Water Agencies (NACWA) appreciates the opportunity to provide written comments on the U.S. Environmental Protection Agency's (EPA or Agency) recent advance notice of proposed rulemaking (ANPRM) on increasing consistency and transparency when considering costs and benefits during the rulemaking process (EPA-HQ-OA-2018-0107).

NACWA represents the interests of over 300 public clean water utilities across the country that are front-line public stewards safeguarding our nation's water quality. Our members provide an essential service managing billions of gallons of wastewater and stormwater every day to ensure the continued protection of public health and the environment.

As the public clean water community continues its work to safeguard these protections, it must also consider the increasingly complex issue of water affordability. The public water sector is working hard to do what it can to ensure everyone can afford to have access to clean and safe water. However, as this pressing concern continues to grow, EPA must do better to include water affordability considerations in all of its regulatory activities and policy considerations.

EPA's ultimate objective with publishing this ANPRM is encouraging in terms of how the Agency is broadly thinking about costs and benefits across environmental regulatory paradigms. However, it is unclear as to how EPA would actually move forward and achieve increased consistency or greater transparency without Congressional action to revise existing environmental statutes.

As indicated in the ANPRM, there is a long history of Presidential executive orders that instruct federal agencies to conduct cost-benefit analyses and guidance documents EPA can turn to on what factors to consider and how to conduct the analyses. EPA states that it is not taking comment on these existing documents but rather on the role those analyses play in decision making "consistent with statutory direction." EPA acknowledges that it must adhere to the statutory directives established by Congress. But the ANPRM also makes clear EPA is seeking feedback on *how* the Agency internally analyzes costs and benefits across environmental statutes in a transparent fashion, as well as whether and how to best develop these regulations.

It is unclear how EPA can improve consistency and transparency without first addressing the underlying statutes from which it derives its authority.

Acknowledging these significant statutory constraints, ultimately EPA must work with Congress to establish a robust and thoughtful cost to benefit ratio for each statute that determines a threshold for when a regulatory action benefits outweigh its costs. This effort will help mitigate a variety of uncertainties with cost-benefit analyses and overburdensome regulations.

As it works to advance this issue, the Agency should consider the following:

1. When approaching the difficult nature of adopting uniform definitions of specific terms (e.g., “cost,” “benefit,” “weight of scientific effort,” etc.), EPA should attempt to be consistent with its definitions between regulations to the extent possible given the unique nature of each statute. Along this same line, EPA should make every effort to eliminate regulations that include arbitrary interpretations (e.g., “reasonableness” or “appropriate”) and replace these provisions with quantitative and measurable standards for the purpose of cost-benefit analysis. EPA should also craft regulations that continually collect data to quantify or measure whether the regulation is achieving a net environmental benefit as compared to its associated costs.
2. While public clean water agencies are investing significant resources to improve water quality, they continue to face increasingly complex regulatory challenges, including more stringent water quality requirements. These regulatory requirements are often only attainable at an excessive cost and, if met, do not always guarantee greater protection of public health or the environment. For example, in developing water quality criteria recommendations at the federal level, EPA continually points to its duty to develop scientifically-robust criteria that, by Clean Water Act mandate, are based solely on scientific and risk policy factors and do not account for cost impacts on the regulated community or other state-specific factors.

In previous interactions with the regulated community, EPA has asserted that its criteria recommendations are not directly enforceable and therefore have no cost impact. But as a matter of practice, EPA has put pressure on state regulators to adopt and enforce water quality standards identical to the standards EPA would adopt, based on federal preferences, criteria, and guidance. If these criteria recommendations end up serving essentially as rules that carry enforcement consequences, EPA must consider the costs associated with its recommendations.

3. The Agency should increasingly look to the concept of net environmental benefit for future rulemakings. Where costs may be considered in existing rulemakings, such evaluations are often limited, looking at only a single environmental medium. For example, costs may be considered when crafting a permit limit for the discharge of nutrients. The cost to install and operate a new technology to remove nutrients may be weighed against the benefit of reduced nutrients in the water environment. But the impacts of increased energy and chemical use and air emissions associated with the new treatment technology are not evaluated. As clean water utilities continue to meet increasing regulatory burdens, it is imperative EPA balance the right costs while simultaneously quantifying net public health and environmental benefits.
4. Calculating true environmental costs or benefits is neither simple nor straightforward, as this type of economic analysis requires the pros and cons of a regulatory action to be reduced to a monetary value. Within the environmental

regulatory landscape, there are often no quantitative dollar values for determining the benefits of a healthy and clean environment. In addition, when promulgating a regulation, there are often ancillary benefits or co-benefits that mitigate pollutants unrelated to or beyond the original purpose or objectives of the rule. Additional dialogue with the regulated community on how these co-benefits and any co-costs should be considered is needed.

5. EPA could improve transparency in its current practices by including actual cost benefit calculations in the administrative record before beginning public comment. Providing calculations, data references, and all assumptions in the record would greatly promote EPA's transparency efforts. If information is relied upon, yet barred from release legally, EPA could redact the necessary information.

NACWA appreciates the opportunity to comment on EPA's ANPRM on increasing consistency and transparency in conducting cost-benefit analyses during the regulatory rulemaking process. NACWA welcomes additional dialogue with the Agency on what this ANPRM aims to achieve and looks forward to continued engagement with EPA on this critical topic in the future. Please do not hesitate to contact me by phone at 202/533-1839 or by email at eremmel@nacwa.org with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Emily Remmel". The signature is fluid and cursive, with a large initial "E" and a long, sweeping tail.

Emily Remmel
Director of Regulatory Affairs