

June 7, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave NW
Washington, DC 20460

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:

On behalf of our millions of members and supporters, the undersigned 30 national, regional, state, and local organizations urge EPA to withdraw its interpretive statement exempting point source pollution discharges through groundwater to surface water from Clean Water Act (CWA) protections. The agency's April 15, 2019 statement is a complete reversal from how it has applied the CWA in the past and will create a dangerous new loophole in the Act. Instead of giving polluters free passes from needing water pollution permits, EPA should ensure broad protections for our nation's rivers, streams, lakes, and bays, as required by the plain text of the CWA.

The plain language of the Clean Water Act is clear: a prohibited "discharge of pollutant" means "any addition of any pollutant to navigable waters from any point source." In other words, the Act clearly prohibits unpermitted discharges and contains no exclusions for pollution reaching surface waters by way of groundwater. No such exclusions exist because when Congress passed the Act in 1972 it recognized the need for robust protections in order to ensure our nation's water quality.

In addition to ignoring the plain text of the Clean Water Act, EPA's interpretive statement ignores the fact there are existing permits across the country that require limits on pollution that travels through groundwater before reaching surface waters. Yet EPA does not address how exempting these types of discharges from CWA protections will impact existing permits for hog lagoons, mines, and other polluting industries. Nor does the agency address how this new exemption will impact the environment or the health of communities living near these polluting facilities. Instead the agency problematically asserts it will protect these surface waters from pollution through other environmental statutes such as the Safe Drinking Water Act (SDWA) or the Resource Conservation and Recovery Act (RCRA). In reality EPA has a poor track record protecting water quality under RCRA (especially when it comes to coal ash contamination) and

SDWA only protects underground sources of drinking water, not surface waters. In addition, the SDWA Underground Injection Control (UIC) program is inadequately funded, overseen, and enforced. In short, these other statutes alone are insufficient to protect communities from water pollution.

EPA claims its interpretive statement is “the best, if not the only, reading of the Clean Water Act,” but both the Fourth and Ninth Circuit Courts of Appeals recently held that the plain language of the CWA confirms that point-source discharges that reach navigable waters via groundwater are subject to National Pollution Discharge Elimination System (NPDES) permitting. Though EPA acknowledges its statement does not apply in the fourteen states that fall within the Fourth and Ninth Circuits, it fails to address the confusion its abrupt reversal of longstanding regulatory practice—which blatantly contradicts these court rulings—will cause.

Communities across the country are already burdened with too much water pollution—from toxic coal ash ponds to hog lagoons to mining waste to bursting oil pipelines—and EPA’s decision to create a new loophole in the Clean Water Act will burden these communities with even more pollution. Our organizations urge EPA to abandon its confusing and dangerous interpretive statement and to instead reaffirm strong clean water protections across the country.

Sincerely,

National Organizations

Alliance of Nurses for Healthy Environments
American Sustainable Business Council
Environment America
Clean Water Action
Children’s Environmental Health Network
Endangered Species Coalition
GreenLatinos
League of Conservation Voters
National Parks Conservation Association
Natural Heritage Institute
Policy Link
River Network
Save EPA
Sierra Club

Regional Organizations

Center for a Sustainable Coast
Saint Simons Island, Georgia

Healthy Gulf
Madison, Mississippi

League of Women Voters—Upper Mississippi River Region
Andover, MN

Mississippi River Collaborative
Knoxville, Tennessee

Passaic River Coalition
Morristown, New Jersey

WE ACT for Environmental Justice
New York, New York

State Organizations

Amigos Bravos

Taos, New Mexico

Friends of the Mississippi River

St. Paul, Minnesota

Illinois Council of Trout Unlimited

Highland Park, Illinois

Montana Trout Unlimited

Missoula, Montana

Northeastern Minnesotans for Wilderness

Ely, Minnesota

OVEC-Ohio Valley Environmental Coalition

Huntington, West Virginia

Pennsylvania Council of Churches

Harrisburg, Pennsylvania

Save Our Sky Blue Waters

Duluth, Minnesota

Tennessee Clean Water Network

Knoxville, Tennessee

Local Watershed Organizations

Cahaba River Society

Birmingham, Alabama