



June 22, 2020

Mr. Andrew Wheeler, Administrator
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460

Re: Guidance: Administrative Procedures for Issuance and Public Petitions
Docket ID No. EPA-HQ-OA-2020-0128-0001

Dear Administrator Wheeler:

The Association of State Drinking Water Administrators (ASDWA) appreciates the opportunity to offer comments on the notice for “Guidance: Administrative Procedures for Issuance and Public Petitions” as published in the May 22, 2020 *Federal Register* (Volume 85, Number 100). ASDWA is the independent, nonpartisan, national organization representing the collective interests of the drinking water program administrators in the 50 states, five territories, the District of Columbia, and the Navajo Nation who implement the Safe Drinking Water Act (SDWA) every day to ensure the protection of public health and the economy. ASDWA supports and represents the collective interests of its members in their administration of national drinking water program requirements within their states or territories. The following ASDWA comments are intended to broadly address the proposed rulemaking, but they do not necessarily reflect the concerns of individual states.

THE CRITICAL ROLE OF GUIDANCE

Guidance documents are one of the most effective and important tools EPA has for its regulatory programs. Although EPA issues policy and guidance documents to assist the public and regulated entities, guidance documents play a critical role for state implementation of federal rules. State primacy agencies use EPA guidance when interpreting federal rules, ensuring compliance, and exercising flexibilities built into the regulations. EPA guidance can help clarify intent, promote consistent implementation across states and regions, and answer questions left unresolved by rule language. ASDWA agrees that guidance is only to interpret regulations rather than as a substitute, change, or expansion for regulation and that this should be made clear in the [EPA Guidance Portal](#) and in each guidance document.

Guidance is necessary for state primacy agencies’ implementation of rules and guidance development is particularly essential when EPA is promulgating a new rule. ASDWA would like to emphasize guidance for new rules should be delivered as close to finalization of the rule as

feasible. While guidance is not a substitute for regulation, it is often needed to facilitate understanding, implementation, and compliance with the statutes and regulations by states. In [ASDWA's February 11, 2020 comments on the Proposed Lead and Copper Rule Revisions](#) (LCRR), states requested EPA developer update 16 guidance documents to assist states and water systems with implementing and complying with the LCRR. EPA is relying heavily on state decisions on complex issues in the proposed rule and without the development of the requested guidance will place a significant burden on state drinking water programs when implementing the LCRR.

THE CRITICAL ROLE OF STATES

Under cooperative federalism, state primacy agencies are the co-regulators with EPA. States implement and enforce the regulations developed by EPA and therefore, when guidance is deemed necessary, ASDWA strongly encourages EPA to seek early, meaningful, and substantial involvement from states on the content of guidance and the practicalities of implementation. By collaborating closely with state primacy agencies before and during guidance development, EPA can help ensure the guidance addresses the appropriate issues and accounts for potential implementation difficulties the states may encounter.

RESPONSES TO SPECIFIC EPA QUESTIONS

Appropriate state regulatory programs should be directly notified through EPA Headquarters program offices or EPA Region staff when the agency is considering developing, modifying, or revoking guidance and should be made aware of any potential actions before EPA takes action. Posting a notice on the guidance portal should be sufficient for informing the public that a new guidance document has been issued, an active guidance document has been modified, or an active guidance document has been withdrawn. EPA may consider an early notification protocol for the affected regulated community through appropriate trade or industry associations.

ASDWA supports the proposed process for a public review and comment opportunity for all significant guidance documents, whether that document is new or a modification or withdrawal of an active guidance document, through the Federal Register. ASDWA has no suggestions for additional information to be included in petitions to modify or withdraw an active guidance document. ASDWA strongly encourages both the petitions and EPA's response be made public on the EPA Guidance Portal or in a similar table or database.

BROADER INPUT ON THE DEVELOPMENT AND LIFECYCLE OF GUIDANCE

ASDWA supports the development of a consistent guidance development, modification, and revocation process. Following such procedures increases Agency transparency and serves as a way to inform the guidance process with input from key stakeholders. EPA should make it clear, however, how the Agency will evaluate the public petitions and who within the Agency will make the decision to take action, such as modification or withdrawal of a guidance, in response to a petition request. For non-significant guidance, there appears to be no process for obtaining feedback from any stakeholder outside of the petitioner. ASDWA encourages EPA to outline how these petitions will be considered and how feedback will be solicited. ASDWA does not support the concept that guidance should be developed, modified, or withdrawn in response to

stakeholders who are not satisfied with current implementation or those who petition without careful thought and due to a capricious inclination.

As previously stated, guidance plays a critical role for state implementation and enforcement of federal rules and therefore, ASDWA suggests petitions or requests by states be prioritized, since states are co-regulators with EPA and implement EPA's regulations.

ASDWA also suggests EPA improve access the guidance. Currently the CSV file available for the Office of Water guidance documents has inconsistent data formats, particularly for older documents that make it difficult to convert into a usable spreadsheet or table. ASDWA recommends EPA perform a significant data cleansing for the CSV file and offer a downloadable Excel file that can be used to view and organize all the guidance documents within an EPA Program Office.

ADD MISSING GUIDANCE TO THE PORTAL

Because the proposed rule states, EPA "may not cite, use, or rely on any guidance document as defined in this rule, that is not posted on the EPA Guidance Portal, except to establish historical facts," ASDWA urges EPA to conduct multiple reviews to ensure that all guidance documents used by Drinking Water Programs are included and accessible in the portal. At the time these comments were written, the "[Guidance Manual for Compliance with the Filtration and Disinfection Requirements for Public Water Systems Using Surface Water Sources](#)," March 1991 edition was not available on the [EPA Guidance Portal](#). This is just one example that ASDWA was able to identify and may not represent the full breadth of missing documents from the portal. ASDWA does not have the resources to conduct an exhaustive check but expects that EPA will ensure all guidance documents are accessible through the portal.

If you have any questions or want to discuss these comments further, please contact Wendi Wilkes at wwilkes@asdwa.org and myself at aroberson@asdwa.org or feel free give me a call at (703)-812-9507.

Sincerely,



J. Alan Roberson, P.E.
Executive Director
Association of State Drinking Water Administrators (ASDWA)

Cc: David Ross - OW
Jennifer McLain – EPA OGWDW
Eric Burneson – EPA OGWDW
Anita Thompkins – EPA OGWDW