



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF WATER

MEMORANDUM

SUBJECT: Policy to Promote Efficient Use of Agency Resources When Developing Documents in Support of Final Agency Actions

FROM: David P. Ross
Assistant Administrator

TO: Regional Administrators

The purpose of this memorandum is to institute a policy to increase workload efficiency when the U.S. Environmental Protection Agency (EPA or Agency) is preparing documents in support of draft and final agency actions. This policy specifically applies to EPA's statutorily-required review and action (approvals and disapprovals) on state and tribal submittals under the Clean Water Act or Safe Drinking Water Act. However, the policy in this memorandum should be applied to EPA's review and action on all submissions to EPA Headquarters and Regional Water Programs.

Because final agency actions issued by EPA are often subject to administrative or judicial review, decision documents and supporting materials must be drafted to explain the Agency's rationale and document support in the administrative record for the decision. Over time, as a result of continued litigation and the good faith desire by EPA staff to document legally robust and defensible agency actions, EPA's decision documents have become very lengthy, sometimes amounting to hundreds of pages. In many cases, these documents are overly long because EPA staff have included detailed summaries of the state or tribal submittal. These summaries can include material that is quoted directly from the submittal or language developed by EPA that repeats or paraphrases the contents or intent of the submittal. In either case, quoting, repeating, or extensively paraphrasing language from a state or tribal submittal can be resource-intensive, requiring careful drafting and review to ensure that the quoted, repeated, or paraphrased language is accurate. That resource-intensive effort does little to improve the legal defensibility of EPA decision documents, which instead should focus on EPA's rationale for why a state or tribal submittal does or does not comply with mandatory statutory or regulatory requirements.

In an effort to use our valuable but limited EPA resources more efficiently and effectively, all final agency action documents and supporting materials should be developed and drafted to reference, cite, or direct the reader to the state's or tribe's original submittal and supporting materials where feasible. Final agency action documents should refrain from quoting, repeating, or extensively paraphrasing

information from the state's or tribe's submittal. In addition to being resource intensive and redundant of material that is already contained in the administrative record, quoting, repeating, or extensively paraphrasing information submitted to EPA creates an unnecessary risk that the final agency action documents may misrepresent, misconstrue, or otherwise create inconsistencies with the submittal. Even minor changes in wording, grammar, or punctuation can cause changes in the meaning of a sentence, and this risk is heightened when reviewing technical or scientific documents, which could result in unintended consequences to the legal defensibility and programmatic integrity of the final agency action.

Regional Administrators should ensure that, to the extent that Regional Water Division Directors and staff are developing documents to support an approval or disapproval of state or tribal submittals, those documents reference or cite directly to the original source material rather than quote, repeat, or extensively paraphrase information presented in the submittal. The Agency should also refrain from describing, characterizing, or interpreting the intent of a state's or tribe's submittal and refrain from developing policy recommendations for state or tribal implementation. Implementing the policy in this memorandum will reduce the amount of unnecessary redundancy in EPA final agency action documents, saving the Agency hundreds of FTE hours per year, while also maintaining or improving the legal defensibility and programmatic integrity of the final agency action. This policy will also ensure that EPA's actions to approve or disapprove are based on the original language drafted by the state or tribe, which helps maintain the states' and tribes' primary role as policy makers in their jurisdiction.

Implementation of the policy outlined in this memorandum will ensure that EPA resources are utilized more efficiently and maintain or improve the legal defensibility and programmatic integrity of final agency actions. A website that will contain additional information on the Office of Water's policies and directives related to Agency efficiency is currently in development, and this policy will be included on that website.

cc: Water Division Directors