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Dedicated to protecting our nation's ground water

Date: August 9, 2017

To: Water Programs
Environmental Protection Agency

Subject: Comments on EPA's Draft National Water Program Guidance 2018-2019,
Publication Number 800D17001

The Ground Water Protection Council (GWPC) appreciates the opportunity to provide comments on the draft National Water Program Guidance for 2018-2019.

Our organization's membership consists of representatives of state groundwater and underground injection control regulatory agencies that have come together to mutually work toward the protection of the nation's groundwater supplies. Our focus is specifically on protecting the nation's groundwater supplies, conserving groundwater resources for all beneficial uses, and recognizing groundwater as a critical component of the ecosystem. The GWPC is unique among state associations in that its members are the state officials who set and enforce regulations on groundwater protection and underground injection.

We appreciate the shortened and more succinct format that this version of the guidance represents. We assume that more detailed individual program grant guidance, that provides a more complete description of expectations, will be forthcoming once a final budget has been approved.

The GWPC would like to offer the following suggestions and observations related to elements 10 and 11.

10. Source Water Protection pages 12 -13

EPA Activities:

Most of the activities seem to echo the Source Water Collaborative efforts. However, the expected State, Tribal, Local and Community Activities (especially item 3) are not also reflected as EPA Activities. We would like to see a commitment by the EPA Source Water Program to work with other EPA programs such as CWA stormwater, non-point source, and the 106 programs and the underground storage tank program. The guidance lacks commitments for EPA program cooperation—only encouragements for the state programs to acknowledge the tools developed in the other programs and that grant funding can be used to support joint efforts that achieve the various common goals of these programs.

Expected State, Tribal, Local and Community Activities:

There is an expectation that these entities should work with businesses, industry and citizens to take actions to protect drinking water sources which are related to FIFRA labeling, small capacity septic systems, and discharges related to the stormwater and MS4 programs. Again, there doesn't appear to be an equivalent commitment by EPA to include these issues in other EPA program grant guidance for these related FIFRA and CWA programs.

11. Underground Injection Control (Including UIC Grant Guidance) pages 13-14

EPA Activities:

Activity 2. The GWPC is committed to working with the EPA staff as they continue to develop a consistent and predictable process for the review of aquifer exemption requests under SDWA. We recognize that the July 24, 2014, memorandum and the "Aquifer Exemption Checklist" from Peter Grevatt, Director of the Office of Ground Water and Drinking Water, to the Region I-X Water Division Directors, is the first step to meeting this EPA activity. However, still left unresolved is the interpretation of "current" and "future" use.

In the spirit of cooperative federalism, GWPC urges EPA to work with the primacy programs to resolve these differences. In states that have received delegation for implementing the UIC program, the checklist seems to minimize the state's water resource planning processes, the aquifer protection provisions, including the state's UIC permitting regulations minimizes the state's ability to evaluate, permit and enforce permitting decisions and the state's technical expertise involved in submitting a request for a UIC program delegation to allow for the individual permit to operate under an aquifer exemption. We point out that EPA's actions are highly duplicative of the state's efforts and are often done without due consideration of state authority to protect water resources.

We understand that EPA has both a direct implementation role and a state partnership role in reviewing and approving aquifer exemption requests. The new EPA evaluation process as contained in the Checklist does not definitively distinguish between EPA's duties in reviewing a request for an aquifer exemption as a direct implementer and EPA's duties in reviewing a determination made by a primacy state in response to a request for an aquifer exemption. As such, we are concerned that the Checklist might be misinterpreted to imply that EPA must duplicate the primacy state's review of the aquifer exemption request. States, as part of their request for a program revision, evaluate requests for aquifer exemptions to ensure that the requested exemptions are consistent with the requirements under the Safe Drinking Water Act and EPA's regulations. This duplicate review can cause additional expense to both the states and the permit applicant, has already resulted in overly delayed UIC permitting, and has resulted in increased regulatory burden at the state level.

We recommend that a process be followed that is like the approach EPA took with the Source Water Protection Program, i.e. letting states define their own terms in determining "current" and "future" use, and that these be used by EPA to evaluate the primacy states' aquifer exemption requests. We urge EPA to recognize the full value of state water resource planning and state groundwater protection programs which include permit provisions for monitoring; preventing excursions of injection fluids; and, for Class III uranium in-situ injection, aquifer restoration requirements.

We also request clarification as to whether EPA intends for the Memorandum and the Checklist to replace or supplement Guidance 34 and (or) if EPA intends to enter into a rulemaking process under 40 CFR 146 to clarify the definition of “current” and “future” use. We suggest that this determination be included within the scope of this activity.

Activity 3. GWPC’s FracFocus data shows that currently very few, if any, wells are being hydraulically fractured using diesel fuels. Given the paucity of hydraulic fracturing jobs being conducted using one of the 5 diesel components listed in Guidance #84, this activity should not be considered a high program priority, especially if it is based upon requiring rulemaking at the state level to allow for this activity and resulting changes to the Class II primacy agreements.

Activity 4. GWPC has already developed injection-induced seismicity information, educational primers, and predictive models for UIC regulators to help prevent injection induced seismic events. More importantly, we feel that the states programs and regulators are well ahead of EPA on this issue and we feel that EPA should not expend very limited UIC resources developing information which is already available.

If EPA chooses to develop these educational materials, we would be willing to work with EPA collaboration efforts so that they can benefit from the information and primers for UIC regulators that GWPC has developed and that their efforts are not duplicative, or more costly than needed.

Activity 5: There are very few (if any) commercial Class VI wells being permitted and spending very limited UIC resources to accomplish this activity should not be on high the list of priorities.

Expected State, Tribal, Local and Community Activities:

Activity 1 d. For full public disclosure and education, there should be an acknowledgement of the aquifer exemption process in this activity. We suggest that it be reworded to read “No injection occurs which allows for the introduction of any contaminant into an USDW if the presence of that contaminant may cause a violation of any primary drinking water standard or otherwise adversely affect publichealth *without an EPA authorized aquifer exemption.*”

Activity 2. Given the current levels of federal financial support to the state primacy programs, this appears to be an unfunded federal mandate. Any gains achieved by state programs are not tied to the grant resources in any meaningful way. Therefore, tying very limited grant resources to this activity is moot.

Activity 3. The expected groundwater protection program coordination efforts by State, Tribal, Local and Community are not reflected as EPA UIC activity. We would like to see a commitment in the EPA UIC Program Activities to work with the EPA’s CWA programs such as stormwater, non-point source, and the 106 programs and the RCRA remediation program to coordinate groundwater protection efforts related to Class V injection.

Because this is an expected activity for States, it is unclear who the “grantees” are in the statement “Assist owners and operators of UIC facilities in meeting the above objectives and require grantees to adopt a variety of approaches and to coordinate efforts with other groundwater protection programs.” We also suggest that the phrase, “variety of approaches”, be clarified.

Activity 4. EPA needs to give direction on what is “timely” and provide a specific period for EPA’s review of program revisions. It is our understanding that EPA has no plan to address program updates in a comprehensive manner. Before making this a priority activity for the states, EPA should provide information on what constitutes a program update and grant guidance on “primacy program re-submissions and approvals” rather than simple regulatory updates to existing primacy programs.

Activity 5. This activity should have grant program goals consistent with level of funding received from EPA. State programs receive a majority of their funding from their state operating budget and state funding mandates. EPA cannot expect program capacity to be consistent with past efforts in reduced budgetary conditions. We suggest that this be reworded to reflect the statement on EPA’s website which discusses grants and indicates that “UIC primacy programs enforce the minimum federal UIC requirements.”

Activity 6. This item is problematic given the current issues some states have had providing data to the National UIC Database. For example, changes to the business rules that were not vetted with the states contributing to the database have resulted in the inability of some states to continue providing data and some states are having problems flowing data in the Class V program which results in the limited grant funding going solely to data flow issues. Until all issues with the National UIC Database are resolved, this should not be a priority. Instead we suggest that this item should be under EPA Activities and should read “EPA should review the current National UIC Database and modify, update or replace it as needed to facilitate primacy program submission of data.” We are prepared to assist in this regard.

Activity 8. This should be reworded to reflect all potential results which ensure that Class I, II and III (salt solution) wells that lose mechanical integrity are addressed. Please see comment on Measure SDW- 7.

Activity 9 and SDW-8. EPA needs to define what is a high priority well. Measure SDW-8 implies that it is only motor vehicle waste disposal wells and large capacity cesspool being closed or permitted (cumulative). This measure was needed in the 1990’s when these wells were part of a rule revision to the Class V program. We suggest that it is time to revise the measure to reflect what is a high priority well type in cooperation with the individual state programs and state specific conditions based upon individual delegated program priorities, resources and needs.

The GWPC conducted a Class V program survey in 2016 of primacy states and direct implementation programs. The results of the survey indicated that the highest workload priorities for the programs were stormwater disposal, remediation, large capacity septic, and ASR/MAR wells. We suggest that Activity 9 should be based upon individual program needs and the SDW-8 measure should reflect the need to authorize, permit, monitor, or close high priority wells (which could include the 2 listed above, but could also include the well types negotiated within the individual program grants).

Measure SDW-7: We suggest that the following language be inserted before the word within “, placed on approved temporary abandonment status, interim repair status, or shut-in for repair status or plugged.” The measure would then read:

Percent of Classes I, II and Class III salt solution mining wells that have lost mechanical integrity and are returned to compliance, *placed on approved temporary abandonment status, interim repair status, or shut-in for repair status or plugged* within 180 days, thereby reducing the potential to endanger underground sources of drinking water.

We would like to point out that many states require that injection cease if mechanical integrity is lost, thus “reducing the potential to endanger underground sources of drinking water.” Therefore, USDWs are immediately protected without a wait of 180 days. In addition, injection cannot recommence until the well’s mechanical integrity has been reestablished. In addition, some states do not have a temporarily abandoned, or similar, status for wells and are considered either active or abandoned. Due to state budget constraints, scheduling issues and well evaluation activities to determine the problem can result in well repair exceeding 180 days. However, wells in this condition are always shut in during this time thus reducing the potential to endanger underground sources of drinking water.

Thank you for your consideration of these comments. If you have any questions or need additional information, please do not hesitate to contact Mike Paque, Executive Director of the Ground Water Protection Council at mpaque@gwpc.org or 405.516.4972.

Thank you,

A handwritten signature in black ink, appearing to read "M. Paque". The signature is fluid and cursive, with the first name "M." and the last name "Paque" clearly visible.

Michel J. (Mike) Paque, CAE
Executive Director
Ground Water Protection Council