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

AUG - 6 2019

OFFICE OF WATER

Dear Regional Administrators:

Enclosed for your information is a new policy recently issued, titled the *Office of Water Policy for Draft Documents*. This policy follows the Office of Water's effort to inventory its existing draft, interim, and final guidance and policy documents. Through this process, the Office of Water has identified more than 2,500 interim or final documents and approximately 70 draft documents that have never been finalized or formally withdrawn. The new policy requires timely and appropriate management of draft documents in an effort to reduce the potential for confusion related to non-final agency documents and to increase transparency and regulatory certainty for stakeholders. The Office of Water is recommending that regional offices undertake a similar inventory to identify the universe of regional guidance documents, especially those draft documents that have never been finalized or formally withdrawn, and consider adopting a similar management policy for those documents. Please let me know if you have any questions or if the Office of Water can provide any assistance to efforts your regional office undertakes.

Sincerely,

D Ross

David Ross
Assistant Administrator

Enclosure

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**MEMORANDUM**

OFFICE OF WATER

**SUBJECT**: Office of Water Policy for Draft Documents

**FROM**: David P. Ross
Assistant Administrator

**TO**: Office of Water Program Directors

The purpose of this memorandum is to institute a policy for draft guidance documents issued by the Office of Water. Today's policy is effective immediately and applies to all draft documents issued by the Office of Water.

The Environmental Protection Agency (EPA) and the Office of Water routinely issue documents that are intended to support or advance regulatory programs, including guidance and policies. Guidance and policy documents provide information about how the Agency may implement, and evaluate compliance with, regulatory programs. The EPA's guidance documents can also provide recommendations for monitoring and sampling protocols and insight into how the Agency may assess human health risks. Agency documents can be valuable tools for states, stakeholders, and the general public working within complex regulatory programs.

The Office of Water recently surveyed the universe of guidance and policy documents issued by headquarters to support its national programs. Through this process, the Office of Water identified more than 2,500 interim or final policy documents and approximately 70 draft documents that have never been issued in final or formally withdrawn. Although guidance documents can be informative and helpful, the Office of Water is concerned that draft documents that are never issued in final or formally withdrawn may cause confusion for regulators, the regulated community, and the general public. This is especially true in circumstances, including litigation, where these documents are interpreted as mandating certain actions or outcomes. No Agency guidance or policy documents, whether issued in draft, interim, or final, have the force or effect of law. These documents can only provide information and recommendations to states and stakeholders, and cannot be used to mandate any specific action, outcome, or requirement without first going through the rulemaking process.

The Office of Water is issuing today's policy to reduce potential confusion related to non-final Agency documents and to increase transparency and regulatory certainty for stakeholders. The Office of Water has determined that draft documents that have not been finalized within a reasonable period of time should be managed appropriately to prevent confusion and misuse of non-final Agency documents. To that end, effective immediately, all draft documents that were issued more than two years ago and that have not been finalized are hereby rescinded. In addition, any draft documents that have been recently issued must be finalized within two years of the draft date or will automatically be rescinded. Lastly, any future draft documents that are not issued in final within two years of the draft date shall be automatically rescinded.

The Office of Water does not expect today's policy to affect documents that are critical to national program implementation because they were never finalized. It is reasonable to conclude that any draft policy and guidance documents would have been finalized if they were necessary to enhance effective program implementation. To the extent that existing draft guidance or policy documents are important to the Office of Water's national programs, those documents will need to be re-issued and finalized in a timely manner in accordance with today's policy. Office Directors should prepare a strategy to re-issue any such documents which identifies the process that will be used to update, modernize, and finalize the drafts in accordance with today's policy.

To implement this policy and to increase transparency, the Office of Water intends to establish a website database with the complete collection of guidance and policy documents that are currently effective. The Office of Water will also establish a procedure to ensure that all new draft and final guidance documents are uploaded to this public website within 30 days of issuance. This database will be updated and maintained to ensure transparency and promote regulatory certainty.

**cc:** Regional Water Division Directors, Regions 1-10