

June 7, 2019

Submitted Electronically to Docket No: **EPA-HQ-OW-2019-0166**

Comments of the National Rural Electric Cooperative Association (NRECA)

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 (84 FR 16826, April 23, 2019)

The National Rural Electric Cooperative Association (NRECA) submits these comments in response to the April 23, 2019, [notice](#) by the Environmental Protection Agency (EPA): Interpretive Statement on Application of the Clean Water Act (CWA) National Pollutant Discharge Elimination System (NPDES) Program to Releases of Pollutants from a Point Source to Groundwater.

NRECA agrees with and supports EPA's conclusion that the CWA excludes from the NPDES program all releases of pollutants from a point source to groundwater, regardless of a hydrologic connection between the groundwater and jurisdictional surface water. Responding to the agency's request for public input regarding what may be needed to provide further clarity and regulatory certainty on the issue NRECA recommends the agency:

1. Socialize broadly the Interpretive Statement by sending copies directly to all EPA Regions and states and posting the Interpretive Statement prominently on the agency's website;
2. Revise statements regarding the relationship between the Coal Combustion Residual (CCR) Rule and CWA NPDES permit requirement to align with the Interpretive Statement; and
3. Initiate public notice-and-comment rulemaking to amend the NPDES regulations to reflect the Interpretive Statement, taking into account Supreme Court proceedings.

The National Rural Electric Cooperative Association (NRECA) is the national service organization for America's electric cooperatives. Member-owned, not-for-profit electric cooperatives constitute a unique sector of the electric utility industry. NRECA represents the interests of the nation's almost 900 rural electric utilities responsible for keeping the lights on for more than 42 million people across 47 states. Cooperatives serve 56

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percent of the nation's landmass, 88 percent of all counties, and sell 13 percent of all electric energy sold in the United States. Cooperatives own and maintain 42 percent (2.6 million miles) of U.S. electric distribution lines that serve our communities and generate five percent of total U.S. electricity. NRECA's member cooperatives include 62 generation and transmission (G&T) cooperatives and 831 distribution cooperatives. Both distribution and G&T cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service.

NRECA is a member of the Utility Water Act Group (UWAG) and endorses the [comments](#) submitted by that organization. We agree that the Interpretive Statement comprehensively analyzes the CWA's text, structure, and legislative history; relevant case law; and relevant policy and practical factors, and that the agency analysis supports the conclusion that releases to groundwater are not subject to the NPDES permitting program. We also agree that the Interpretive Statement provides much needed regulatory certainty and clarity for CWA regulators, the regulated community, and the public. The Interpretive Statement should be broadly socialized and ultimately codified through public notice-and-comment rulemaking, taking into account Supreme Court proceedings.

NRECA is also a member of the Utility Solid Waste Activities Group (USWAG) and also endorses the USWAG [comments](#) which emphasize that Congress intended certain releases to groundwater to be addressed under other federal programs, specifically the Resource Conservation and Recovery Act (RCRA). RCRA, including the 2015 Coal Combustion Residuals (CCR) rule, was specifically designed to protect against groundwater contamination from solid and hazardous waste disposal units, including contamination to groundwater that is hydrologically connected to surface water. To avoid duplicative regulation, the RCRA statutory definition of "solid waste" expressly excludes industrial discharges which are NPDES-regulated point sources; RCRA and the CWA cannot both apply to the same release. Therefore, the determination that a release from a CCR unit is a CWA point source would, effectively, prohibit regulation of such units under the CCR rule – a rule written explicitly to address groundwater impacts from such units. The Interpretation Statement resolves any ambiguity on this point, and NRECA encourages EPA to revise certain online statements<sup>1</sup> regarding the relationship between the CCR rule and the NPDES permit requirements to align with the Interpretive Statement.

In summary, NRECA supports EPA's analysis and conclusion in the Interpretive Statement that releases to groundwater are not subject to NPDES permitting. Environmental impacts from such releases – especially any from CCR management - are appropriately controlled through existing federal and state statutes and programs

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<sup>1</sup> See Relationship Between the Resource Conservation and Recovery Act's Coal Combustion Residuals Rule and the Clean Water Act's National Pollutant Discharge Elimination System Permit Requirements, available at <https://www.epa.gov/coalash/relationship-between-resource-conservation-and-recovery-acts-coal-combustion-residuals-rule>

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explicitly designed to protect groundwater. Moving forward, EPA should broadly socialize the Interpretive Statement, correct inconsistent interpretations in certain CCR statements, and ultimately codify the conclusion in regulation, taking into account Supreme Court proceedings.

If you have any questions regarding these comments, please contact me at [Dorothy.kellogg@nreca.coop](mailto:Dorothy.kellogg@nreca.coop).

Respectfully submitted,



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Water and Waste Issues