



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-285834

July 28, 2000

The Honorable Robert C. Smith
Chairman
The Honorable Max Baucus
Ranking Minority Member
Committee on Environment and Public Works
United States Senate

The Honorable Bud Shuster
Chairman
The Honorable James L. Oberstar
Ranking Minority Member
Committee on Transportation and Infrastructure
House of Representatives

Subject: Environmental Protection Agency: Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Environmental Protection Agency (EPA), entitled "Revisions to the Water Quality Planning and Management Regulation and Revisions to the National Pollutant Discharge Elimination System Program in Support of Revisions to the Water Quality Planning and Management Regulation" (FRL-6733-2). We received the rule on July 11, 2000. It was published in the Federal Register as a final rule on July 13, 2000. 65 Fed. Reg. 43586.

The final rule revises and clarifies EPA's current regulatory requirements for establishing Total Maximum Daily Loads (TMDLs) and the National Pollutant Discharge Elimination System under the Clean Water Act.

Enclosed is our assessment of the EPA's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that, with the exception of the determination regarding the Unfunded Mandates Reform Act of 1995 as discussed in the report cited below, the EPA complied with the applicable requirements.

Enclosed is a recent report issued by our Office concerning this rulemaking. (TMDL Regulations, GAO/RCED-00-206R, June 21, 2000) The report discusses uncertainties in the assumptions used in EPA's economic analysis and EPA's determinations under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act of 1995 (UMRA). The report concludes that because of the uncertainties in the EPA cost estimates, the analysis did not adequately support EPA's determination that a more detailed analysis of costs, benefits, and alternatives was not needed pursuant to the UMRA.

If you have any questions about this report, please contact James W. Vickers, Assistant General Counsel, at (202) 512-8210. The official responsible for GAO evaluation work relating to the subject matter of the rule is Peter Guerrero, Director, Environmental Protection Issues. Mr. Guerrero can be reached at (202) 512-6111.

Robert P. Murphy
General Counsel

Enclosures

cc: Mr. Thomas E. Kelly
Director, Office of Regulatory
Management and Information
Environmental Protection Agency

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE
ISSUED BY THE
ENVIRONMENTAL PROTECTION AGENCY
ENTITLED
"REVISIONS TO THE WATER QUALITY PLANNING AND MANAGEMENT
REGULATION AND REVISIONS TO THE NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM IN SUPPORT OF REVISIONS TO THE WATER
QUALITY PLANNING AND MANAGEMENT REGULATION"
(FRL-6733-2)

(i) Cost-benefit analysis

EPA performed a cost-benefit analysis of the final rule and concludes that the total incremental cost associated with the rule is not expected to exceed \$22.88 million per year over the period from 2000 through 2008. This figure consists of annual costs for revising (a) the listing requirements (\$0.066 million), (b) the content and development of TMDLs (\$13.708 million), and (c) the requirement for TMDLs to be developed within 10 years (\$9.03 million). EPA's reissuance of state-issued expired and administratively continued permits constitutes the final \$0.078 million.

Our June 21, 2000, report points out that these costs are based assumptions that have numerous uncertainties. For example, EPA assumed that states are essentially in full compliance with current regulations and, therefore, only estimated the costs that would result from the final rules. Also, key water quality data available to EPA was incomplete, inconsistently collected by states, and sometimes based on outdated and unconfirmed sources.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Administrator of EPA has certified the final rule will not have a significant economic impact on a substantial number of small entities. According to EPA, the final rule does not impose any requirements on small entities but only on states, territories, and authorized tribes.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

As defined in title II, EPA has determined that the final rule contains no federal mandates on either state, local, or tribal governments, or the private sector of more than \$100 million in any one year. This is based, according to EPA, on the fact that the final rule does not impose enforceable duties on any state, local, or tribal government, or the private sector and because the total incremental cost associated with the rule is not expected to exceed \$22.88 million in any one year.

As noted previously in the June 21 report on the rulemaking, our Office disagreed with the above determination.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final rule was issued using the notice and comment procedures contained at 5 U.S.C. 553. On August 23, 1999, EPA published a Notice of Proposed Rulemaking in the Federal Register. 64 Fed. Reg. 46012.

EPA received over 34,000 comments including 30,500 postcards, 2,700 letters commenting on one or two points, and 780 detailed letters addressing many issues. In addition, EPA conducted six public meetings around the nation and met with groups representing various stakeholders. The final rule, according to EPA, reflects the results of considering these comments and meetings.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule contains information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB). OMB has approved the collection and assigned control number 2040-0071.

The revisions to the collection necessitated by the final rule will result in an additional estimated annual burden of 6,497 hours per respondent and a total annual burden for all 56 respondents of 363,845 hours. The additional costs associated with the revisions are estimated to be \$252,676 per respondent and an annual total cost for all 56 respondents of \$14,149,932.

Statutory authorization for the rule

The final rule is issued pursuant to the authority of sections 303(d) and 402 of the Clean Water Act (33 U.S.C. 1251 et seq.).

Executive Order No. 12866

The final rule was reviewed by OMB and found to be a “significant regulatory” action, which met the requirements of the order.

Executive Order No. 13132 (Federalism)

EPA determined that the final rule does not have federalism implications within the meaning of the order. However, in the spirit of the order, EPA notes that it undertook a consultation process along the lines specified in the order. The

preamble to the final rule details the discussions and meetings EPA held with state, local, and tribal officials, including a federal advisory committee.