



Top Stories

1/25/18 – The Environmental Protection Agency (EPA) [withdrew](#) the “once in, always in,” policy that was aimed at preventing “major” emitters of hazardous air pollutants from losing their “major” designation, even if emissions fell below the level at which such a designation occurs. Major emitters had been subject to tougher standards in complying with Maximum Achievable Control Technology rules, even if their emissions dropped low enough to be considered an “area” source that would then be subject to fewer or no requirements. EPA will now allow such major sources to be classified as “area” sources should it take certain actions to bring down its emissions below major source thresholds.

1/22/18 – The U.S. Supreme Court [ruled](#) that challenges to the 2015 “Water of the United States” (WOTUS) rule belong in federal district courts, not circuit level federal courts. EPA has proposed delaying the WOTUS effective date until 2020 as it works to revise the rule. Depending on when EPA is able to finalize a rule, a group of 13 states may be covered by a stay by a North Dakota district court, while the other 37 would be subject to the rule. Finalized by the Obama administration in 2015, WOTUS sought to define which waters fall under federal jurisdiction. For more information on next steps for WOTUS please read [NCSL’s blog](#).

1/22/18 – A purported version of the administration’s [infrastructure plan](#) was leaked by multiple media companies, although the White House neither confirmed nor denied the document’s authenticity. The plan contains four “pots” of potential funding and the percentage of total funding that each pot would account for, although the plan did not include an overall dollar amount of funding. Additionally, the document gave no indication as to the source of funding. Later in the

week, White House Infrastructure Advisor, DJ Gribbin, [indicated](#) the administration was not seeking new revenue for its forthcoming plan and would instead propose a series of spending cuts to existing domestic discretionary spending, including reductions in funding for Amtrak and other transit grant programs. Within the leaked draft plan, the largest pot of funding, infrastructure incentives, would receive 50 percent of funding and be structured as a competitive grant that would provide funding for projects that also brought in new non-federal revenues. Federal funds from this pot would only be able to represent a maximum of 20 percent of the project’s cost, a significant reduction from existing programs. Additionally, proposed projects would receive credit for non-federal revenues created within the past three years, but not beyond. Such funds could fund many transportation infrastructure projects but not energy-related or broadband projects. Moreover, no specific agency is named as the lead federal agency. The second pot, transformative projects, would receive 10 percent of overall funding. It would also be a competitive grant program, but run solely by the Department of Commerce and aimed at higher risk projects. The third pot, rural infrastructure, would receive 25 percent of funds and be given to states as grants based on the percentage of rural population and rural highway lane miles in their state. States would be free to use these funds on numerous types of projects including transportation, energy, broadband and water. The final pot, federal credit and financing, would provide a little over 12 percent to expand existing federal financing programs. Finally, the plan would remove the annual cap on private activity bonds (PABs), along with other changes to PABs that would increase their value. There are additional provisions in the document that would give new flexibilities to states to raise new transportation revenues, including authority to toll existing interstates and commercialize

rest areas. It remains very unclear if this is the final version that the administration will formally submit as well as whether Congress will go along, propose their own plan, or do nothing.

1/19/18 – The U.S. Department of Interior (DOI) [announced](#) its draft proposed program (DPP) for developing the National Outer Continental Shelf (OCS) Oil and Gas Leasing Program for 2019-2024. The draft proposes to make more than 90 percent of the total OCS acreage and more than 98 percent of undiscovered, possibly recoverable, oil and gas resources in federal offshore areas available for future exploration and development. This is a significant change from the current plan in which 94 percent of the OCS is unavailable for recovery activities. It is the second step following the Bureau of Ocean Energy Management's (BOEM) July 2017 request for information on what should be included in the program and follows up on both an executive order from the president, and a secretarial order from DOI Secretary Ryan Zinke. Zinke later [tweeted](#) that he was removing the possibility of drilling off the coast of Florida, an action that sparked demand for exemptions from other states. The action was later clarified to [not be a formal action](#), and a review of resources off the coast of Florida would still be conducted. For more information on the DPP, please read [NCSL's Info Alert](#).

1/18/18 – The National Aeronautics and Space Administration (NASA) [released](#) an analysis showing that 2017 was the second warmest year on record, behind 2016. Additionally, the National Oceanic and Atmospheric Administration (NOAA) [found](#) 2017 to be the third warmest since 1880, in a separate study of the global average temperature over land and ocean surfaces. The two agencies use different methods for analyzing temperatures, but their findings "remain in strong agreement" over the long term, NOAA said in a press release. NOAA also noted "Both analyses show that the five warmest years on record all have taken place since 2010."

1/18/18 – DOI Secretary Zinke proposed dividing the management of federal lands into 13 multistate regions along boundaries of watersheds and basins. The regions would split states like Colorado, Nevada and Wyoming into multiple sections, which would be a significant shift from the current division based of state lines. DOI envisions these proposed

boundary changes "will reduce administrative redundancy, share resources more effectively, improve coordination among federal, state and local agencies, improve interagency coordination, drive more decisions to be made at the regional level." It is unclear when this proposal will be finalized. For more information, DOI published an FAQ, which can be read [online](#).

1/12/18 – EPA gave [preliminary approval](#) to Oklahoma to directly regulate coal ash disposal. Oklahoma would be the first state to gain that authority under the Water Infrastructure Improvements for the Nation Act, passed in 2016. The state's proposed program "contains all of the elements" of the federal regulations for coal combustion residuals, including groundwater monitoring, location restrictions and post-closure care, in addition to some "state-specific" language and requirements. Georgia is the only other state to apply, and is awaiting EPA's decision.

1/11/18 – EPA [reported](#) that for the first time ever, auto manufacturers failed to reach the required greenhouse gas emissions standards for model year 2016 vehicles, but were still able to maintain formal compliance with the rule through previously earned credits. The U.S. fleet of 2016 models was required to meet a standard of 263 grams per mile overall, but averaged 272 g/m, which was an increase from 268 g/m for 2015 vehicles. Fuel economy averaged 24.7 miles per gallon, a 0.1 mpg increase from the previous year, which was short of the 1 mpg improvement originally envisioned in the rule. Additionally, EPA noted that data from previous years might need to be updated in the wake of the [Volkswagen defeat-device scandal](#), and allegations made against [Fiat Chrysler](#).

1/5/18 – DOI [agreed](#) to a proposal to exchange parcels owned by an Alaskan tribal corporation for lands within the Izembek National Wildlife Refuge. The swap would be used to route a controversial gravel road through a wilderness area for providing residents of King Cove, Alaska with reliable access to medical care via the Cold Bay all-weather airport.

1/4/18 – EPA [anticipates](#) finalizing compliance decisions for its 2015 ground-level ozone standard by April 30. Under the Clean Air Act, EPA officials were required to have made all

designations by the beginning of October 2016. This follows the release by EPA on Dec. 21, 2017, of its "[120 day letters](#)" for states that indicate the anticipated area designations for the portions of the country not already designated for the 2015 ozone standards, which instituted a maximum of 70 parts per billion (ppb) standard, down from the previous maximum of 75 ppb. States now have 120 days to provide additional information before EPA determines the final designations. EPA will also be opening a 30-day comment period for the public to provide input on these designations before they are finalized. In November, EPA [issued](#) a partial set of designations that found some 85 percent of the U.S. counties to be in attainment.

12/29/17 – EPA was [ordered](#) by the U.S. Circuit Court of Appeals for the Ninth Circuit to propose new standards for hazardous lead dust and lead-based paint in 90 days as part of a ruling in which the court said that the agency acted illegally in delaying its update to the 17-year-old standards. Previously, Congress mandated that EPA regulate lead-based paint and lead dust in two laws in the early 1990s. The agency set [standards](#) in 2001 but has not updated them since.

12/29/17 – DOI [rescinded](#) the department's rule governing hydraulic fracturing practices on public lands, finalized in 2015. The rule would have set new standards for well construction, wastewater management and chemical disclosure, and would have required operators to get BLM approval for fracking operations. California [filed](#) suit against the administration, stating that the repeal was in violation of federal law and "tossed aside the public interest."

From Congress

1/25/18 – The Senate confirmed [R.D. James, 89-1](#), to be the Assistant Secretary of the Army for Civil Works, leading the U.S. Army Corps of Engineers. James most recently served as a civilian member and engineer on the Mississippi River Commission, and is a self-employed farmer and manager of cotton gins and grain elevators in Missouri.

1/17/18 – The House Rules Committee held a [hearing](#) examining the possibility of reinstituting the earmark process in congressional legislation. Many members of Congress and the

administration have been supportive of such actions, however a bipartisan group of 10 senators released [legislation](#) supporting a permanent ban.

1/10/18 – A bipartisan group of 21 Florida lawmakers [wrote](#) to the administration opposing the Bureau of Safety and Environmental Enforcement's (BSEE) [proposal](#) to revise or eliminate regulations on offshore drilling safety equipment put in place following the Deep Water Horizon oil spill in the Gulf of Mexico in 2010. The proposed rule would lessen requirements concerning real-time data on oil-production operations to facilities onshore, and strike a provision requiring third-party inspectors of critical equipment, such as blowout preventers, which failed in the Deepwater Horizon case, be certified by BSEE.

From the Administration

1/26/18 – President Donald Trump will nominate former astronaut James F. Reilly to head the Interior Department's U.S. Geological Survey (USGS). Reilly flew on three shuttle missions, including a 1998 flight to the Mir space station, and trips in 2001 and 2007 to the International Space Station. Additionally, from 1979 until 1994, Reilly worked as an oil and gas exploration geologist, specializing in offshore drilling.

1/24/18 – DOI Secretary Zinke appointed P. Daniel Smith as the new acting director of the National Park Service. Smith, the former superintendent of Colonial National Historical Park in Virginia, recently rejoined the Park Service from retirement just two weeks ago as deputy director. NPS awaits a permanent Senate-confirmed director although the president has yet to nominate anyone for the position.

1/19/18 – EPA [announced](#) plans to rewrite its [2017 regional haze regulations](#) that were released in the final days of the Obama administration. The haze program, dating back to 1999, is geared toward clearing the air in 156 national parks and wilderness areas by 2064. The decision comes following three petitions for administrative reconsideration by several utilities, and the state of Alaska.

1/18/18 – EPA, [revoked](#) its prior approval of Ohio's decision not to include its portion of Lake Erie on its list of polluted waters as required by [Section 303\(d\)\(1\)\(A\)](#) of the Clean Water Act. The agency requested the state revise its decision as the lake has been significantly impacted by seasonal large algal blooms.

1/17/18 – EPA [released](#) its initial list of Superfund National Priorities List (NPL) sites with the greatest expected redevelopment and commercial potential. Only sites added to the NPL are eligible to receive federal funding for long-term cleanup. EPA's Superfund program is responsible for cleaning up some of the nation's most contaminated land and responding to environmental emergencies, oil spills and natural disasters.

1/16/18 – BLM published two notices in the Federal Register to push forward land use plans related Utah's [Bears Ears](#) and [Grand Staircase-Escalante](#) monuments, which the administration is decreasing in size. BLM will accept comments for a 60-day period ending March 19, or 15 days after the last public meeting, whichever is later.

1/9/18 – The National Marine Fisheries Service [issued](#) a biological opinion concluding that three widely used agricultural pesticides, chlorpyrifos, malathion and diazinon, negatively impact salmon populations as well as being harmful to orca whales who consume the salmon.

1/5/18 – EPA [deemed](#) parts of three states, Puerto Rico and Guam out of compliance with its 2010 primary sulfur dioxide national ambient air quality standard in the third and next-to-last round of attainment designations for the 75-parts-per-billion threshold.

1/2/18 – The Fish and Wildlife Service (FWS) [granted](#) Endangered Species Act protections to the Alabama Salamander and designated 420 miles of Alabama streams and rivers as critical habitat.

12/27/17 – The Bureau of Land Management (BLM) [issued](#) a memorandum, which states that BLM "does not need to lease and develop outside of [grouse] habitat management areas before considering any leasing and development within

[grouse] habitat." Previous agency guidance directed agency field offices to prioritize oil and natural gas leasing and drilling projects outside of the most sensitive greater sage grouse habitat.

12/26/17 – EPA [denied](#) a petition filed in 2009 by the Humane Society of the United States and other advocacy groups to list concentrated animal feeding operations (CAFOs) as a "category of sources" under the Clean Air Act. The law directs EPA to regulate emissions of toxic air pollutants from specified industrial "sources."

From the Courts

1/26/18 – Politico reported that the D.C Circuit on Friday denied a request by EPA and manufacturers to rehear a case on overturning the agency's regulation to limit use of hydrofluorocarbons. The court in August rejected EPA's rule phasing down the use of the global-warming inducing coolant. The U.S. has not ratified its participation in the amendment to the Montreal Protocol limiting HFCs

1/22/18 – The Supreme Court of the United States [announced](#) that it will hear an [appeal](#) regarding critical habitat designation of the dusky gopher frog under the Endangered Species Act (ESA). FWS designated 1,600 acres of privately owned land as "critical habitat" for the species, despite it only existing in Mississippi, potentially costing \$34 million in lost land development. The court also announced that it would not hear a case regarding ESA where the 9th circuit found that including future impacts of climate change to habitat availability was necessary and appropriate when making ESA determinations.

1/19/18 – The D.C. Circuit Court of Appeals will [hear](#) oral arguments on March 16 over the 20-month delay of EPA's chemical safety rule, known as the Risk Management Plan update or the Chemical Disaster Rule. The rule aims to set tighter reporting and safety requirements for chemical, fertilizer, refining and other industrial facilities, but was delayed until 2019 as EPA reviews and revises the rule. A motion to stay the delay was [denied](#) in August 2017.

1/19/18 – EPA filed a [motion](#) with the D.C. Circuit Court of Appeals to delay the effective date of chemical release reporting requirements from animal waste under the Comprehensive Environmental Response, Compensation, and Liability Act and Emergency Planning and Community Right to Know Act . The move follows recently released [guidance](#), [contact information and reporting forms](#) concerning such hazardous substance air releases from animal waste. The acts require facilities to report releases of hazardous substances from animal waste in amounts greater than/equal to their reportable quantity within a 24-hour period. The new reporting requirement follows a court order late last year to begin tracking some emissions.