



Top Stories

8/24/18 – The Department of Justice filed a request in the District Court for the Southern District of Texas for consideration of a nationwide preliminary injunction of the agency's 2015 Clean Water Rule. The action follows an Aug. 16 ruling by the U.S. District Court for South Carolina which found that the Environmental Protection Agency (EPA) violated requirements of the Administrative Procedures Act this past February when it issued a two-year delay of the applicability date of its [2015 Clean Water Rule](#). The Clean Water Rule, more commonly known as Waters of the United States (WOTUS), aims to determine the scope of federal authority to regulate "water of the United States," and when states, local governments and others must seek federal permits to develop land because it contains WOTUS. The court's finding means the rule, which sought to define which waters fall under federal jurisdiction, will now go into effect for 26 states. For more information, read [NCSL's Info Alert](#).

8/21/18 – The EPA asked the U.S. Court of Appeals for the 9th Circuit to clarify a deadline for the agency to ban the pesticide chlorpyrifos, suggesting the deadline should not take effect until the agency exhausted any appeals. Earlier this month, the Court [ordered](#) the agency to revoke all tolerances and registrations for the pesticide within 60 days, citing evidence that the chemical's residual on food can cause neurodevelopmental damage in children. The EPA had previously revoked a March 2017 [proposed ban](#) on the pesticide. Chlorpyrifos is one of the most commonly used pesticides, although its use has declined in recent years due to health risk concerns.

8/21/18 – The EPA proposed the [Affordable Clean Energy \(ACE\)](#) rule to replace the 2015 Clean Power Plan, which the

agency has separately proposed to repeal. The ACE rule would establish emission guidelines for states to develop plans to address greenhouse gas (GHG) emissions from existing coal-fired power plants, without setting individual state GHG emissions limits. For more information, read [NCSL's Info Alert](#).

8/17/18 – The U.S. Department of Agriculture (USDA) announced a new strategy for managing catastrophic wildfires and the impacts of invasive species, drought, insect and disease epidemics. The report, [Toward Shared Stewardship across Landscapes: An Outcome-Based Investment Strategy](#), outlines the Forest Service's plans to work more closely with states to identify landscape-scale priorities for targeted treatments in areas with the highest payoffs.

8/7/18 – The U.S. Army Corps of Engineers (the Corps) issued a [memorandum](#) encouraging states to take "an active role in the permitting of dredge and fill operations" in waterways and wetlands as allowed by [Section 404\(g\)](#) of the [Clean Water Act \(CWA\)](#). The action follows a June-issued [memo](#) by the EPA concerning its role in permitting discharges of dredged or fill materials under the same section. Specifically, the memo directs the agency to develop a regulation that eliminates its ability to veto a project both before a permit application is filed or after a permit has been approved. The memo indicates that the regulation should also require the EPA to wait for the Corps to complete its environmental review of a project before a decision is made about a potential veto, and any such determination should be subject to public comment. Under the CWA, the Corps is the permitting agency for dredging and filling in waterways and wetlands, but the EPA can review state permitting standards and veto permit specifications it does not agree with. Only two states—Michigan and New Jersey—have

assumed control over the dredge-and-fill program for most waters in their state since the law was enacted in 1972. Additionally, the EPA has only used its veto authority 13 times. For more information on the Corps memorandum, please read [NCSL's Info Alert](#).

8/1/18 – The EPA [announced](#) it will not revise or repeal its [2015 national ambient air quality standard for ozone](#) in response to its ongoing study of the rule. As such, the agency will likely have to defend the 2015 rule in court while it simultaneously moves forward with the next scheduled review of the rule to be completed in 2020. The 2015 rule tightened the standard to 70 parts-per-billion, down from the 2008 standard of 75.

8/1/18 – The Fish and Wildlife Service (FWS) [announced it is withdrawing](#) its environmental mitigation policy that aimed to improve or maintain the status of affected natural resources when considering permits and projects. FWS relied upon a 2016 U.S. Supreme Court [decision](#) which held that agencies requiring off-site mitigation as a condition of granting a permit must show "a 'nexus' and 'rough proportionality' between the government's demand and the effects of the proposed land use."

7/27/18 – The 4th U.S. Circuit Court of Appeals [ruled](#) that the Department of Interior (DOI) and USDA violated existing environmental laws when they approved, in December 2017, rights of way through federal lands for the [Mountain Valley Pipeline](#), which would carry gas through the Jefferson National Forest and other federal lands in Virginia. The pipeline may still be regranted federal approval if the agencies fix the errors described by the court, but that could require months of environmental studies and public comment.

7/24/18 – The EPA issued a [final notice](#) determining that biodiesel heating oil, jet fuel, naphtha and liquid petroleum gas (LPG) produced from distilled sorghum qualifies for credits under the Renewable Fuel Standard. The change is anticipated to add 21 million Renewable Identification Numbers to the program which can be used to comply with the advanced biofuel mandate.

7/19/18 – The DOI [issued](#) a set of proposed regulatory changes to the Endangered Species Act. One proposal would adjust how the DOI and the Department of Commerce determine whether to add or remove plants and animals from lists of federally protected species and designate critical habitats. Another proposed change would rescind an existing FWS rule that automatically provided endangered species protections to wildlife listed only as threatened. A third proposal would reduce the steps in a consultation process that outside agencies are required to go through with FWS or the National Oceanic and Atmospheric Administration (NOAA) to ensure their actions would not jeopardize protected species. The proposals will be open for public comment for 60 days.

7/19/18 – The EPA's Office of Inspector General (OIG) [issued](#) a report blaming both the EPA and the state of Michigan for the Flint, Mich. water quality disaster that began in 2016. The report stated that the Michigan Department of Environmental Quality did not adhere to two Lead and Copper Rule requirements—to develop and maintain an inventory of lead service lines needed for sampling, and to maintain corrosion control treatment after the water switch in 2014. It noted that the EPA must strengthen its oversight of state drinking water programs to improve the efficiency and effectiveness of its response to drinking water contamination emergencies. The report also noted that eight of the nine recommendations from its [report](#) have been resolved and that the EPA has stated its desire to develop a pilot program with states to launch a national monitoring program for lead standards in response to the IG's one unresolved recommendation.

7/17/18 – A Government Accountability Office [report](#) found that 41 percent of school districts serving 12 million students had not tested their drinking water for lead in the last year. Forty-three percent of districts serving 35 million students tested for lead with 37 percent finding elevated levels of lead and took actions to reduce or eliminate exposure. The survey, based on a report of more than 500 school districts across the country, found widely varying programs to test for and remediate lead in drinking water. No federal law requires schools to test their drinking water for lead; a [1988 law](#) requiring states to establish such programs was struck down as [unconstitutional](#).

8/16/18 – The Senate Environment and Public Works Committee (EPW Committee) held a [hearing](#) to examine the implementation of the Clean Water Act Section 401 which requires an applicant for federal license, or permit, provide certification from the state certifying that any discharges will comply with its established water quality standard requirements. EPW Committee Chairman John Barrasso (R-Wyo.), has argued that states are abusing their authorities under Section 401 and reaching beyond its original intent of providing certification based solely on “discharge.” The hearing follows a July [hearing](#) by the Senate Energy and Natural Resources Committee on pipelines and transmission in which Chairman Lisa Murkowski (R-Alaska) and Barrasso respectively commented that states were misusing power granted to them under the Clean Water Act’s Section 401 to block new natural gas pipelines. “States have abused the authority to block projects for political reasons, not really having anything to do with water quality at all,” Barasso said. Murkowski agreed, saying the state hurdles were dampening energy industry growth. While the Federal Energy Regulatory Commission (FERC) has the responsibility for authorizing interstate natural gas pipelines, project developers must also get a Clean Water Act Section 401 water quality certification from individual states. Legislation to restrict states authorities has been championed by Barrasso in the [Senate](#), and was included by House Transportation and Infrastructure Committee Chairman Bill Shuster’s [Infrastructure Proposal](#).

7/2/18 – The EPA and the National Highway Traffic Safety Administration (NHTSA) issued a proposed rulemaking, the [“Safer Affordable Fuel-Efficient \(SAFE\) Vehicles Rule for Model Years \(MY\) 2021-2026 Passenger Cars and Light Trucks.”](#) to amend existing Corporate Average Fuel Economy (CAFE) standards and motor vehicle greenhouse gas (GHG) emission requirements. Specifically, NHTSA is tasked with promulgating CAFE standards, while the EPA is tasked with regulating tailpipe greenhouse gas emissions from vehicles. This proposal acts on that April announcement, requesting comments on [various options to amend the existing standards](#), including a “preferred scenario” that would freeze fuel economy standards at 2020 levels for vehicle model years 2021-2027 at an average of 37 mpg, as well as a revocation of California’s Clean Air Act

Section 209 waiver. For more information, read [NCSL’s Info Alert](#).

6/29/18 – The EPA and the Department of the Army [issued](#) a supplemental proposal to the July 2017 proposed action to repeal the 2015 definition of “Waters of the United States” (WOTUS). The new proposal specifically requests comment on the legal basis of the 2015 WOTUS rule. Additionally, the supplemental notice of proposed rulemaking clarifies that the agencies are proposing to permanently repeal the 2015 rule in its entirety by including further details compared with the initial proposal issued last year.

From Congress

8/1/18 – The Senate passed, 92-6, a FY 2019 “minibus” [spending package](#) which included the Interior-Environment spending bill. The Interior-Environment bill totals \$35.9 billion in discretionary funding, slightly higher than the \$35.3 billion provided by the House in its [version](#) of the bill, which passed mid-July, 217-199. The Senate version funds the EPA at \$8.1 billion, \$100 million above the House, but provides less funding for the Clean and Drinking Water State Revolving Funds. Additionally, unlike the House bill, the Senate text does not include a provision to repeal the 2015 Waters of the U.S. rule, but it is expected to be a point of contention during conference. It remains unclear if Congress will agree on a conference bill prior to the start of FY 2019 on Oct. 1, 2018.

7/19/18 – The House passed [229-180](#), a [resolution](#) declaring that a carbon tax (i.e. fee imposed on the burning of carbon-based fuels) would be detrimental to the U.S. economy.

7/17/18 – A bipartisan group of lawmakers [wrote](#) to acting EPA Administrator Andrew Wheeler urging him to consider to review the [report](#) from the Agency for Toxic Substances and Disease Registry in the Department of Health and Human Services, which set minimum risk levels for PFOA and PFOS seven to 10 times lower than EPA’s 2016 health advisory for the chemicals.

7/2/18 – Senator John Barrasso [unveiled](#) a proposal to amend and reauthorize the Endangered Species Act. The proposal

would give states greater input into the federal process for listing endangered species by expanding their authority in writing species recovery goals, habitat objectives and other criteria for delisting or downlisting at-risk animals and plants and revamping the judicial review process for decisions to delist species under the act.

From the Administration

8/21/18 – The Court of Appeals for the D.C. Circuit [rejected](#) the EPA's request to hold the case surrounding coal ash ponds in abeyance while the agency reviewed provisions of the [2015 rule](#). However, in the same ruling, the court agreed that the EPA should be allowed to rewrite parts of the rule, specifically provisions related to the definition of residual coal ash, although the court also ordered the agency to rewrite parts of the rule which allowed utilities to continue using unlined coal ash ponds unless the ponds started leaking, noting that "clay lined" ponds did not qualify as lined. In addition, the court struck down the rule's exemption for "legacy ponds" located at shuttered coal-fired power plants. Prior to the ruling, in July 2018, the EPA [announced](#) the first of many changes to the 2015 rule which would extend the life of some existing coal ash ponds that are unable to comply with the 2015 restrictions from April 2019 to October 2020. It would allow states to implement alternative performance standards that would allow permitting authorities to not require utilities to monitor groundwater "if there is evidence that there is no potential for migration of hazardous constituents to the uppermost aquifer." States will also be able to issue technical certifications themselves, instead of relying on a professional engineer. The rule also allows utilities additional time when closing coal ash ponds. Finally, it revises groundwater protection standards for four pollutants that do not have maximum contaminant levels set under the Safe Drinking Water Act: cobalt, lead, lithium and molybdenum. The EPA is still expected to finalize changes proposed this spring.

8/15/18 – The Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) [released](#) draft environmental impact statements and resource management plans for the revised Grand Staircase-Escalante and Bears Ears national monuments that would allow for energy development and other

activities. In December 2017, presidential proclamations were released modifying both the [Grand Staircase-Escalante](#) and [Bears Ears](#) national monuments. Bears Ears was [reduced](#) by 85 percent, and Grand Staircase-Escalante by nearly half.

8/13/18 – In a court filing, the EPA [indicated](#) it will need another 14 months to complete an air quality study of the Renewable Fuel Standard (RFS) to ensure that the existing program isn't worsening air quality. The "anti-backsliding" study was to have been completed in 2010 but was found by the agency's Inspector General in 2016 to yet to have been conducted. The finding prompted a lawsuit by the Sierra Club, which [asked](#) the Court in June to impose a December 2018 deadline on the agency to complete the study, and a June 2019 deadline to publish draft rules for mitigation measures. The agency said if ethanol and other biofuels are contributing to additional pollution, it would take 23-44 months to develop a mitigation proposal, and another 13-26 months to finalize new rules.

8/6/18 – USDA [released](#) a three-year action plan outlining its priorities and goals for using current and future Farm Bill conservation programs to help agricultural producers improve the water quality and overall health of the Chesapeake Bay watershed. The release follows the EPA's [release](#) of its midpoint assessment of the bay's total maximum daily load, finding that six bay states fell short of project goals to reduce nitrogen pollution, although most have made progress in limiting phosphorus and sediment pollution.

7/31/18 – The EPA [released](#) its annual report on air quality, tracking our nation's progress in improving air quality since the passage of the Clean Air Act. The report found that between 1990 and 2017, average concentrations of harmful air pollutants decreased significantly—specifically, sulfur dioxide has decreased by 88 percent, lead by 80 percent, carbon monoxide by 77 percent, nitrogen dioxide by 56 percent, fine particulate matter by 40 percent, coarse particulate matter by 34 percent and ozone by 22 percent.

7/30/18 – The USDA's Rural Development program [announced](#) it is looking to partner with interested stakeholders to assist with infrastructure upgrades and advancements to enhance rural quality of life throughout the nation. When Congress passed the

FY 2018 omnibus appropriations bill in March of this year, it included more than \$4 billion in loans and \$1 billion in grants for rural water infrastructure projects. Rural community leaders can apply for these funds electronically by using the interactive [RD Apply tool](#). They can also contact their [state director](#) to discuss project concepts and to learn more about submitting a successful application.

7/25/18 – The DOI [announced](#) plans to implement unified regional boundaries for all of the department's bureaus, except for the Bureau of Indian Affairs–Education, and the Office of the Special Trustee for American Indians. The regional boundaries will mitigate from their current regional structures to participate in the new unified regional boundaries. Reorganization plans follow the president's March 2017 [executive order](#).

7/24/18 – BLM released a [memo](#) announcing that it would no longer require its compensatory mitigation practice—where companies pay into environmental restoration funds to offset development on public lands, "except where the law specifically requires." As such, BLM won't impose mandatory compensatory mitigation into its "official actions, authorizations to use the public lands, and any associated environmental review documents, including, but not limited to, permits, rights-of-ways, environmental impact statements, environmental assessments and resource management plans."

7/19/18 – Susan Combs, the nominee to be assistant secretary, [remarked](#) during a Senate Energy and Natural Resources Committee hearing that the DOI will conduct analysis to determine where to relocate the Bureau of Land Management headquarters between now and March 2019. The DOI is currently implementing a pilot program to reorganize its operations in Alaska as part of its efforts to reorganize the structure of the agency.

7/18/18 – The U.S. Court of Appeals for the D.C. Circuit [ordered](#) a stay of recent EPA action which would allow manufacturers to continue to lift the production cap on "glider trucks." The court indicated that its order is only to give itself time to fully consider a motion to permanently reverse the EPA's decision, even though the EPA, on July 8, announced that it will not enforce a 300-unit production cap for 2018 and

2019 on manufacturers of glider trucks. Previously, EPA studies found gliders are significantly more polluting than new engines. The 2017 standard will be enforced and was based on manufacturers' previous output levels to provide glider manufacturers with "regulatory certainty."

7/5/18 – The U.S. Army Corps of Engineers [announced](#) 60 flood and storm damage-reduction projects in 16 states and one territory that it plans to accomplish with \$15 billion in disaster recovery funding provided in the Bipartisan Budget Act (BBA) of 2018.

6/29/18 – The EPA [issued](#) a proposal that would allow the agency to make use of its [2016 Cross-State Air Pollution Rule update](#) to satisfy "good neighbor" requirements for its [2008 ground-level ozone standard](#) which required upwind states to reduce pollution that harms air quality in downwind states. The 2016 rule is aimed at reducing emissions of nitrogen oxides from coal-fired power plants in 22 states mainly in the eastern United States. The order came in response to a lawsuit brought by Connecticut and New York which argued that federal regulators were illegally overdue in addressing ozone-forming emissions from other states. Under the court order, the EPA must make a final determination by early December.

6/28/18 – The EPA [published](#) guidance for state, local and tribal governments on how to request disclosure of confidential business information under the [Toxic Substances Control Act \(TSCA\)](#). TSCA provides the agency with the authority to require reporting, record keeping and testing requirements and restrictions relating to chemical substances and mixtures. TSCA excludes certain substances such as food, drugs, cosmetics and pesticides.

6/27/18 – The DOI [announced](#) \$552.8 million in Payments in Lieu of Taxes (PILT) for FY 2018. These federal payments to local governments help offset losses in property taxes due to non-taxable federal lands within their boundaries. The FY 2018 PILT payments are the largest amount ever allocated and represent a 19 percent increase compared to FY 2017.