



Top Stories

9/19/18 – The Environmental Protection Agency (EPA) [proposed](#) rescinding a previously enacted final rule that would have extended leak repair requirements for large refrigerant systems to include those that relied on hydrofluorocarbons (HFCs), a replacement for earlier chemicals, chlorofluorocarbons (CFCs) that were found to deplete the ozone layer. However, subsequent research indicated that HFCs trap far more heat in the atmosphere than carbon dioxide. The new proposal states that EPA does not have the authority to set leak requirements for non-ozone depleting substances, such as HFCs. The proposal would result in increased greenhouse gas emissions equivalent to 3 million metric tons of carbon dioxide, equal to the annual emissions of 630,000 passenger vehicles, according to EPA's greenhouse gas calculator. EPA will take public comment on the HFC proposal for 45 days.

9/18/18 – The Department Of Interior (DOI) [announced](#) a \$100 million distribution from the Land and Water Conservation Fund (LWCF) to all 50 states, the territories, and the District of Columbia for state-identified outdoor recreation and conservation projects. LWCF funds are derived from Outer Continental Shelf lease revenues and are awarded through federal matching grants administered by the National Park Service. Authorization for LWCF expired at the end of September, which prevents the accumulation of lease revenues going forward, although the LWCF has an existing balance of more than \$20 billion, meaning future awards are likely not in doubt as Congress works on a reauthorization. Read the full [list of state awards](#).

9/13/18 – Attorney General Jeff Sessions issued [guidelines](#) opposing the use of nationwide injunctions in federal court

because "judges have been issuing an increasing number of orders that block the entire United States government from enforcing a law or policy," The guidelines direct attorneys to oppose the orders in court. The memo will help Department of Justice lawyers "present strong and consistent arguments in courts against the issuance of nationwide injunctions."

9/13/18 – EPA [proposed](#) easing monitoring requirements for more than 300 industrial facilities across 20 states under a 20-year-old regulation capping nitrogen oxides (NOx) pollution. Currently, as part of the [1998 rule](#), states are required to write plans addressing NOx pollution, a precursor to smog, in their state implementation plans (SIPs). Additionally, the rule created a NOx trading program for power plants, pulp and paper mills, chemical makers, iron and steel manufacturers and other industrial facilities that use big fossil fuel-powered boilers. EPA's proposal would allow the 20 states and D.C. that are subject to the NOx SIP Call to change monitoring requirements for facilities within their borders if necessary. Specifically, the 20 states in the NOx SIP Call region would have the option of making monitoring requirements known under the rule as "Part 75" optional instead of mandatory. "The SIPs would still need to include some form of emissions monitoring requirements."

9/12/18 – The Fourth Circuit Court of Appeals [reversed](#) a lower court's finding that Dominion Virginia Power violated the Clean Water Act when arsenic linked to its Virginia power plant ended up in federal waterways. Specifically, the judges ruled that Dominion's coal ash landfill and settling ponds didn't qualify as a "point source" under the Clean Water Act because the arsenic flowed from sites through groundwater before reaching the Elizabeth River and Deep Creek. The [Clean Water Act provision](#) addressing discharges defines them as the "addition

of any pollutant to navigable waters from any point source." The 4th Circuit panel found that Dominion's coal ash waste sites do not qualify as a point source because they do not match the law's definition of a "discernible, confined and discrete conveyance." The issue could soon come before the U.S. Supreme Court if the justices agree to take up a recent appeal related to water contamination from the Hawaiian island of Maui.

9/12/18 – The U.S. District Court for the Southern District of Texas halted implementation of EPA's 2015 Clean Water Rule in Texas, Louisiana and Mississippi. 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 decision meant that the rule, which sought to define which waters fall under federal jurisdiction, went into effect for 26 states. The staying of implementation in the three states referenced above means the rule is now in effect in 23 states. For more information, read [NCSL's Info Alert](#).

9/11/18 – EPA unveiled proposed amendments to the [June 2016 New Source Performance Standards](#) for the oil and gas industry that are aimed at controlling emissions of methane and volatile organic compounds from new and heavily modified sources. Specifically, EPA is [proposing](#) to reduce how often oil and gas producers would be required to check for leaks of gas from new wells, adjusting a requirement for certain wells to install pneumatic pump technology, reconsidering allowing oil and gas producers to perform required certifications with certified engineers, and expanding an option for well owners to use emerging technologies as a "alternative means" of curbing methane pollution. According to EPA's [analysis](#), the proposed changes will reduce rule implementation costs for oil and gas producers by \$484 million from 2019 through 2025, while simultaneously reducing the rule's benefits by \$116 million.

Additionally, EPA estimated the proposal would lead to an increase of 380,000 tons of methane, equivalent to about 8.5 million metric tons of carbon dioxide. It would also increase volatile organic compound emissions by 100,000 tons and hazardous air pollutants by 3,800 tons, according to the proposal.

9/10/18 – DOI [issued](#) a nationwide policy for all DOI agencies to draft new action plans consistent with the states' "fundamental responsibility" for fish and wildlife management. The secretary noted in a memo that "the department recognizes states as the first-line authorities for fish and wildlife management and hereby expresses its commitment to defer to the states in this regard, except as otherwise required by federal law." Specifically, within 45 days of the memo, it requests "all Bureaus and Offices complete a review of all regulations, policies, and guidance that pertains to the conservation and management of fish and wildlife species on lands and waters under their jurisdiction that are more restrictive than otherwise applicable State provisions for the management of fish and wildlife, including all such regulations, policies, and guidance that pertain to public recreational use and enjoyment of fish and wildlife species gave the Bureau of Land Management and other Interior agencies. Then, within 90 days each Bureau and Office referenced in the memo provide the Deputy Secretary a report containing detailed recommendations for the respective Bureau or Office to better align its regulations, policies, and guidance with State provisions." After receiving the reports containing detailed recommendations, the deputy secretary will consult with the state fish and wildlife agencies regarding the recommendations and deliver an implementation plan to the secretary within 120 days of the memorandum.

9/10/18 – EPA's director of Registration Division in EPA's Office of Pesticides, Michael Goodis, [stated](#) that glyphosate is not dangerous to humans despite continued public debate about its safety, "I just want to emphasize that based on our extensive review of all the data, the agency doesn't feel that there's any meaningful risk to human health based on exposure to glyphosate," and that "This is consistent with determinations from other countries and regulatory authorities."

9/6/18 – EPA released a memo regarding a proposed reorganization that plans to maintain all 10 regional offices but will restructure them to more closely mimic the operational structure at the agency's headquarters. The plan, which will be submitted to Congress for review, would have each region house eight main program offices covering air, water, land, Superfund and emergency response, enforcement, labs, regional counsel and administration. Currently, regional offices are all structured differently, with programs often reflecting local priorities or otherwise unique offices.

9/12/18 – The Court of Appeals for the D.C. Circuit issued a stay of the 2017 Risk Management Program (RMP) Rule amendments issued by the EPA, which would expand investigations and emergency response. On Aug. 17 the court [vacated a rule](#) that would have delayed the effective date of the rule until 2019, and on Aug. 23 the comment period concluded on a proposed rule that would rescind, or substantially revise, many provisions of the 2017 rule. The RMP rule was issued following [executive order 13650](#), "Improving Chemical Facility Safety and Security," in response to dangerous chemical-facility incidents in the U.S., including the explosion at a fertilizer plant in West, Texas.

8/31/18 – Alexandra Dapolito Dunn, current head of EPA's Region 1, was [nominated](#) by the president to head the agency's office of chemical safety and pollution prevention. In this role, she would lead the agency's effort to implement the 2016 overhaul of the Toxic Substances Control Act and its response to the growing issue of water contamination from perfluorinated compounds or Perfluorooctanesulfonic acid. Prior to her role as regional administrator, she served as executive director and general counsel for the Environmental Council of States for nearly four years. Prior to that she held similar roles at the Association of Clean Water Administrators and the National Association of Clean Water Agencies.

8/29/18 – DOI [issued](#) a new reorganization plan, which would divide the agency into 12 "unified regions" based on watersheds and ecosystems to increase "clarity and simplicity" in its activities. The department currently has 49 regions and moves to reorganize are in keeping with the president's [March 2017 executive order](#) directing the secretary to improve the

efficiency, effectiveness, and accountability of the department by reorganizing certain agency functions and bureaus. The Senate Appropriations Committee recently approved \$14.1 million for DOI's proposed reorganization, while the House approved \$17.5 million.

8/29/18 – EPA received a [letter](#) from the Association of American Pesticide Control Officials requesting that the agency take additional steps to help states manage a number of issues relating to dicamba drift. Drift from [dicamba](#), a widely used herbicide, has caused unintended damage to millions of acres of crops following EPA's approval of its full use in 2016. The association recommended that the agency stipulate that registrations of the herbicide be conditional year to year and also mandate an early-season cutoff date in addition to federal funding to help manage the significant increase in workload. North Dakota and Arkansas have already banned use of dicamba during certain times of the year.

8/28/18 – The Department of Defense (DoD) [expressed concern](#) over EPA's proposed rule, "[Strengthening Transparency in Regulatory Science](#)," that would limit EPA to using studies for which the underlying research data "are publicly available in a manner sufficient for independent validation." DoD stated that "while we agree that public access to information is very important, we do not believe that failure of the agency to obtain a publication's underlying data from an author external to the agency should negate its use."

From Congress

9/18/18 – The Senate Environment and Public Works Committee approved, 11-10, two bills to give the wood stove and brick-making industries more time to meet pollution control requirements. [S. 1857](#), sponsored by Senator Shelley Moore Capito (R-W.Va.) would give manufacturers of wood stoves and other wood-fired home heating appliances until May 2023 to comply with the second and final phase of tightened emission standards issued by EPA three years ago. The current deadline is May 2020. [S. 2461](#), introduced by Senator Roger Wicker (R-Miss.), would allow the brick and clay ceramics industry an additional two years to comply with 2015 limits on releases

mercury and other toxic air pollutants. Under the Clean Air Act, all existing plants are supposed to meet the standards by this December; the bill would push back that deadline until the end of 2020.

9/17/18 – A group of bipartisan lawmakers [introduced](#) a bill that would set standards for federal agencies to enforce in places where per- and polyfluoroalkyl substances (PFAS) are detected. The bill, titled the "PFAS Federal Facility Accountability Act of 2018 would also require EPA to decide whether the chemicals should be designated as hazardous substances under the Superfund law. Additionally, federal agencies would need to make an action plan and enter into an agreement with affected states within one year of their request.

9/13/18 – The House Natural Resources Committee advanced legislation, [H.R. 502](#), that would permanently reauthorize the [Land and Water Conservation Fund \(LWCF\)](#). The bill would ensure 40 percent of funds go to state grants and 40 percent to federal programs, with the remaining 20 percent of the fund going toward a "wide variety" of potential purposes as deemed appropriate. This includes potentially addressing the National Park Service's maintenance backlog. The legislation would also give Washington, D.C., and U.S. territories parity with the states to access LWCF money and sets aside 3 percent of funding for recreational access. LWCF, which is due to expire on Sept. 30, uses revenue from offshore oil and gas drilling to protect and preserve national parks, forests and recreation areas.

From the Administration

9/20/18 – The State Department [announced](#), in a draft report, that the newest proposed Nebraska route for the Keystone XL pipeline would have "no significant" impacts to the environment. Further, the draft concludes that "implementing the [new route] would have no significant direct, indirect or cumulative effects on the quality of the natural or human environments." In August, a U.S. district judge in Montana ruled that a new environmental review was necessary for the oil pipeline's route through Nebraska, because the 162-mile path that state regulators had approved in November, was significantly different than the original path chosen by TransCanada.

9/17/18 – EPA [rejected](#) petitions from Maryland and Delaware seeking assistance from the agency in reducing emissions from states that allegedly contributed to downwind ozone problems.

9/17/18 – EPA's Office of Inspector General [issued](#) a report stating that the agency is not conducting needed inspections to minimize asbestos exposure in schools. EPA is responsible for confirming that school districts in 29 states and the District of Columbia are conducting the required building inspections for asbestos and implementing plans for managing any asbestos found. The inspector general found that between fiscal years 2011 and 2015, the EPA had conducted just 13 percent of compliance inspections. The 21 states that are responsible for monitoring their own schools conducted the remaining 87 percent of inspections.

9/10/18 – EPA [announced](#) its plans to end federal implementation plans (FIPs) for four states promulgated in 2012 under the [regional haze program](#). To replace the FIPs, Missouri, South Carolina, Tennessee and West Virginia will soon get approval for state implementation plans.

9/5/18 – EPA reached a [settlement](#) with the Pennsylvania Department of Transportation to resolve more than 200 alleged Clean Water Act violations primarily at highway construction sites. The state agency agreed to implement a new management program to ensure compliance with the Clean Water Act and Pennsylvania's Clean Streams Law. It will also pay a \$100,000 penalty.

NCSL Resources

Registration is open for NCSL's [2018 Capitol Forum](#) taking place in Washington, D.C., Dec. 4-7.