Top Stories

10/24/18 – The Department of Interior’s (DOI) Bureau of Ocean Energy Management (BOEM) issued a conditional approval to Hilcorp Alaska LLC for its Liberty Project oil and gas development and production plan. If developed, the facility would be the first oil and gas production facility in federal waters off Alaska, in the waters of the Beaufort Sea. DOI Secretary Ryan Zinke stated the department was following through on “President Trump’s promise of American Energy Dominance.”

10/17/18 – Globally, September was the fourth hottest September on record according to monthly data from scientists at National Oceanic and Atmospheric Administration’s National Centers for Environmental Information. The average September global temperature was 1.40 degrees Fahrenheit above the 20th century average of 59 degrees. That means the past five Septembers have ranked as the warmest on record for global land and ocean surface temperature for that month. Scientists also found the year-to-date average global temperature was 1.39 degrees F above the average of 57.5 degrees—the fourth highest on record for the January-through-September period.

10/17/18 – The Environmental Protection Agency (EPA) released the 2017 greenhouse gas (GHG) data collected under EPA’s GHG Reporting Program. As directed by Congress, EPA collects annual, facility-level emissions data from major industrial sources, including power plants, oil and gas production and refining, iron and steel mills, and landfills, as well as upstream fossil fuel and industrial gas suppliers. Total reported GHG emissions decreased 2.7 percent from 2016 at large facilities; declined 4.5 percent from 2016 and 19.7 percent from 2011 at large power plants and declined 1.4 percent from 2016 within petroleum and natural gas systems.

10/10/18 – Congress passed S. 3021, the “America’s Water Infrastructure Act of 2018,” informally referred to as the 2018 Water Resources Development Act (WRDA). WRDA plays a key role in protecting, maintaining and further developing our nation’s water infrastructure systems including, ports, waterways, and clean and safe drinking water. It provides states with added stability and certainty to meet water infrastructure needs while also supporting the safety, environmental protection and economic development of communities across the nation. For more information read NCSL’s Info Alert.

10/5/18 – The U.S. Court of Appeals for the 3rd Circuit ruled that residents whose drinking water has been contaminated by the military’s use of firefighting foam, which contains toxic chemicals—perfluoro-alkyl substances, more commonly referred to as PFAS—can make use of government-funded medical monitoring. A federal district court had dismissed the cases as barred under the Superfund law, but on appeal the 3rd Circuit held that those affected could proceed with a portion of their case and seek medical monitoring.

10/2/18 – The U.S. Forest Service unveiled proposed changes to 2015 final rule concerning sage grouse conservation plans. While the proposal aims to continue many of the protection measures established by the 2015 rule, it would reduce the grouse’s priority habitat and buffers surrounding identified breeding sites. The 2015 actions were a leading cause of the U.S. Department of Fish and Wildlife’s determination that the sage grouse did not warrant protection under the Endangered Species Act.
9/25/18 – The EPA’s Office of Inspector General (OIG), after a review of applications for pesticide emergency exemption applications between January 2010 and September 2017, issued a report noting that it is unable to determine whether the agency’s process for granting the emergency use applications has measures in place to demonstrate that protections for people or the environment are being maintained. Further, the information collected by the EPA’s Office of Pesticide Programs doesn’t allow the office or the public to track the potential risks or benefits of emergency pesticide approvals or understand the scope of any one exempted use.

9/25/18 – A U.S. District Judge in Montana ruled Monday that grizzly bears in and around Yellowstone National Park should remain a protected species, reversing a United States Fish and Wildlife Service decision to lift those protections last year, which cancels what was to be the first bear hunt in the Lower 48 States since 1991. The judge wrote that the wildlife service failed to make a reasoned decision when it delisted a population of roughly 700 Yellowstone grizzlies from the Endangered Species Act and its analysis of threats to the species was “arbitrary and capricious.”

9/25/18 – U.S. Secretary of Commerce Wilbur Ross declared commercial failures for salmon fisheries in Washington, Oregon and California, as well as for California’s sardine fisheries for harvests between 2015 and 2017. As part of the FY 2018 omnibus appropriations package, H.R. 1625, Congress appropriated $20 million for fishery disaster assistance.

9/25/18 – EPA announced a final rule that would shift decisions concerning the National Environmental Policy Act from the Office of Enforcement and Compliance Assurance to the Office of Policy. Generally, when a company wants to build a pipeline, a road or other infrastructure, federal agencies are required by the National Environmental Policy Act to review the project’s environmental impact.

9/24/18 – In two different, but closely related cases, the 6th U.S. Circuit Court of Appeals found the Clean Water Act does not apply to coal ash pollution that first enters groundwater, which is historically subject to state-level regulation, before finding its way to federally regulated bodies of water. The court rejected arguments that either the coal ash ponds or the groundwater itself qualifies as a point source under the Clean Water Act. The act defines a point source as a “discernible, confined and discrete conveyance.”

**From Congress**

10/18/18 – A bipartisan group of 68 lawmakers sent a letter to Acting EPA Administrator Andrew Wheeler urging the agency to uphold California’s authority to set its own vehicle efficiency standards. Earlier this year, EPA proposed freezing federal vehicle fuel economy standards at 2020 levels and revoking California’s waiver to set more stringent greenhouse gas emission targets. Twelve other states and the District of Columbia follow California’s standard, which the letter noted accounts for one of three cars sold in the United States. For more information on the proposed rule, read NCSL’s Info Alert.

10/11/18 – The Senate voted, 52-45, to confirm Jeffrey Bossert Clark to lead the Environment and Natural Resources Division at the Department of Justice. As assistant attorney general, he will lead the federal government’s litigation positions in cases dealing with pollution control laws, public lands, natural resources, wildlife and tribal issues. Prior to his appointment as assistant attorney general, Clark was a partner with the international law firm of Kirkland & Ellis LLP.

10/5/18 – Fifty members of the Congressional Climate Caucus called on EPA Acting Administrator Andrew Wheeler to reverse course on the agency’s proposed Clean Power Plan replacement rule, the Affordable Clean Energy (ACE) rule or, at minimum, allow for more public hearings and a longer comment period. Lawmakers said the rule would be detrimental to public health and the climate.

10/2/18 – The Senate Energy and Natural Resources Committee approved, S. 3172, the “Restore Our Parks Act that could reserve up to $6.5 billion to pay for delayed maintenance projects at 417 national park sites. Specifically, the legislation would set aside up to $1.3 billion for each of the next five years to pay for an array of projects, including building repairs and road construction. The money would go into a new
National Park Service Legacy Restoration Fund, funded by unallocated revenue the government receives from onshore and offshore energy development.

10/2/18 – The Senate Energy and Natural Resources Committee approved, 16-7, a bipartisan bill, S 569, to permanently reauthorize and fully fund, at $900 million annually, the Land and Water Conservation Fund (LWCF). It would make such funding mandatory, meaning offshore oil and gas revenues can be allocated without being subject to the annual appropriations process. In recent years, LWCF's annual appropriation has been about half the authorized level. The Senate differs significantly from the House version, H.R. 502, because it does not include mandatory funding and would require a lower level of guaranteed funding for states. Authorization for the LWCF expired Sept. 30. The fund has sufficient balances to continue supporting LWCF programs, but new revenues will be deposited into the general fund rather than the LWCF trust fund.

From the Administration

10/24/18 – The National Academy of Sciences released a report calling for a "substantial research initiative" to quickly advance technologies that directly remove carbon dioxide from the atmosphere.

10/23/18 – EPA is proposing to extend plan submission deadlines for the 2016 Emission Guidelines for existing Municipal Solid Waste Landfills to Aug. 29, 2019 so that they would align state plan timing requirements with those recently proposed in the ACE rule.

10/19/18 – President Donald Trump issued a presidential memorandum that aims to increase water deliveries for agricultural interests in California. The memorandum would set swift deadlines on environmental reviews for projects in California’s Central Valley Project. However, the dams and canals that make up the Central Valley Project will still have to comply with endangered species laws. Further, the state of California could determine that it needs to change the operation of its separate water delivery system to make up for the lost environmental protections. The memo also includes provisions aimed at hydropower projects on the Columbia River and Klamath River basins that seek to speed up certain reviews.

10/19/18 – The Federal Emergency Management Agency (FEMA) issued a $235 million Notice of Funding Opportunity for its Pre-Disaster Mitigation (PDM) program. Federal funds will be made available as grants to states to implement and sustain cost-effective measures designed to reduce the risk to individuals and property from natural hazards, while also reducing reliance on federal funding from future disasters. FEMA will provide allocations of $575,000 as required by the Stafford Act to states and territories. The remaining PDM funds will be awarded on a competitive basis with a focus on multi-state/tribal mitigation initiatives. The application closing date is Jan. 31, 2019.

10/18/19 – The USDA, FDA and EPA signed a non-binding agreement to improve coordination on educating the public about the importance of reducing food loss and waste. The agencies aim to reduce food waste by 50 percent by 2030 through public-private partnerships.

10/17/18 – BOEM will hold the next offshore wind auction that will include nearly 390,000 acres offshore Massachusetts on Dec. 13, 2018. Nineteen companies have qualified to participate in the auction for the Massachusetts Wind Energy
Area, demonstrating continued strong commercial interest in the U.S. offshore wind market. Also wind-energy related, BOEM published a Notice of Intent to prepare an Environmental Impact Statement for the Construction and Operations Plan for the South Fork Wind Project offshore Rhode Island. If approved, the plan would allow construction and operation of up to 15 turbines that connect via a transmission cable to a grid in East Hampton, New York—the east end of Long Island. The project is approximately 19 miles southeast of Block Island. The 30-day public comment period closing on Nov. 19.

10/11/18 – In response to the dismissal of the head of EPA's Office of Children's Health Protection, Acting Administrator Andrew Wheeler issued a memo to senior staff “reaffirming” the agency’s commitment to protecting children's health. In it he stated “Children in all stages of life, from infancy through adolescence, as well as pregnant women, face environmental health hazards in both the natural and built environments,” as well as encouraging “important research to provide child-specific data, new methods, models, risk assessment tools, and Agency guidance necessary for evaluation of children's environmental health risks.”

10/9/18 – The USDA Secretary announced that Vicki Christiansen will serve as the 19th chief of the U.S. Forest Service. She has been serving as interim chief since March, when Tony Tooke, President Donald Trump's first appointee as Forest Service chief, resigned.

10/9/18 – The Supreme Court will not take up an appeal brought by an alliance of manufacturers and environmentalists in the case of Honeywell v. Mexichem Fluor who sought to reinstitute a 2016 EPA rule concerning the emissions of hydrofluorocarbons (HFCs). The D.C. Circuit Court of Appeals ruled last year that the EPA rule, which required companies to phase out HFCs used in refrigerators and air conditioning in favor of new chemicals. The current administration, supported the court of Appeals ruling, which was written by Justice Brett Kavanaugh.

10/5/18 – EPA rejected four “good neighbor” petitions submitted by Delaware and one petition submitted by Maryland asking EPA to reduce pollution from coal-fired power plants in 5 states, which they blamed for undercutting efforts to meet the 2008 ground-level ozone standard. The agency opened a 60-day window for states to file lawsuits challenging its rejection.

10/2/18 – The U.S. Army Corps of Engineers issued new guidance aimed at expediting dam removal projects across the country. The new policy clarifies how Army Corps project managers enforcing so-called compensatory mitigation regulations should assess dam removal projects. Under the Clean Water Act, developers must offset damage their projects cause to wetlands and waterways by restoring or preserving similar resources or reimbursing an outside firm that completes the work.

10/1/18 – FDA reported, as part of its 2016 Pesticide Residue Monitoring Program, that its own internal testing of glyphosate residues in food found no detectable amounts of the herbicide in over half of commodities tested and only minimal amounts in corn and soybeans. Overall, the annual survey found that more than 99 percent of domestic and 90 percent of imported food samples were in compliance with federal pesticide standards. FDA stated that “the findings in this report demonstrate that overall levels of pesticide chemical residues measured by the FDA are below EPA's tolerances, and therefore at levels that are not concerning for public health.”

10/1/18 – A secretarial order was issued by DOI Secretary Zinke requiring any data used to support agency decision making be publicly available.

9/28/18 – EPA’s inspector general issued a report that the agency should better assess the effectiveness of state inspection and maintenance programs, which aim to improve air quality by identifying cars and trucks in need of repair, because states are lagging in assessing their own programs. The Clean Air Act contains a provision requiring states with the higher levels of air pollution to conduct more stringent inspection and maintenance programs for motor vehicles as such vehicles can be significant sources of ozone and smog. Specifically, the report noted that nine states failed to conduct the required biennial evaluation of the program's effectiveness while another four states failed to conduct the required on-road testing to determine the performance of in-use vehicles. The
report recommended collecting additional performance data from states and conducting outreach to states “with deficiencies in program implementation” to identify any common trends or problems.

9/27/18 – EPA announced, via a new final rule, that it will collect approximately $20 million, annually, from manufacturers to offset around a quarter of its costs related to studying chemicals under the Toxic Substances Control Act (TSCA). Specifically, the fee schedule will run from FY 2019 through FY 2021 with potential revision, as EPA is required to review the structure every three years. The law allows EPA to recover, one quarter of its $80 million in costs related to TSCA. EPA plans to hold three webinars in October and November to discuss how manufacturers can pay the fees.

NCSL Resources

Registration is open for NCSL’s 2018 Capitol Forum, taking place in Washington, D.C., Dec. 5-7.