Top Stories

5/13/19 – Environmental Protection Agency (EPA) Administrator Andrew Wheeler directed four offices overseeing air pollution; water pollution; land contamination, including Superfund; and chemicals and pesticides to reform how they calculate costs and benefits in rulemakings. Specifically, these offices are to “develop reforms, including notice and-comment rulemakings, that outline how benefit-cost considerations will be applied in areas that are in need of greater clarity, transparency and consistency.”

5/10/19 – In a filing to the United States District Court for the District of South Carolina, the administration noted that although it was reviewing its forthcoming proposal on offshore oil and gas drilling in light of recent court decisions, it still planned to move forward with seismic testing, noting that the Department of Interior (DOI) “may authorize seismic survey activity in the [outer continental shelf (OCS)] even in areas of the OCS that are not open to oil and gas exploration.”

5/8/19 – Jeffrey Clark, the Assistant Attorney General of the Environment and Natural Resources Division of the Department of Justice, stated that the agency aims to finalize its repeal and replace of the Waters of the U.S. rule, more commonly known as WOTUS, by the end of 2019—a change from its previous goal of September 2019. For a complete history of WOTUS read NCSL’s timeline here.

5/8/19 – The House Appropriations Committee subcommittees have approved 10 of the 12 FY 2020 funding bills, with four appropriations bills affecting areas covered by the NRI Committee. Specifically, the Agriculture-FDA bill would receive $24.3 billion, a $1.3 billion or 6% increase over current levels ($23 billion), the Energy-Water appropriations measure would receive $46.4 billion, a $1.8 billion or 4% increase over current levels ($44.6 billion), the Interior-Environment bill was allocated $37.3 billion, a $1.7 billion or 5% increase over current levels ($35.6 billion), and the Transportation-HUD bill received $75.8 billion, a $4.7 billion or 7% increase over current levels ($71.1 billion). The House also approved it’s $108.1 billion Military Construction-Veterans Affairs appropriations measure which includes a measure that would provide $60 million for cleaning up per- and polyfluoroalkyl substances (PFAS) at military bases. PFAS are man-made chemicals that may lead to adverse human health effects, currently, about $14 million in defense spending is marked for PFAS cleanup.

5/2/19 – The House passed H.R. 9, 231-190, largely on party lines, which would, if enacted into law, forbid the United States from withdrawing from the Paris climate agreement as well as require the administration to come up with a plan to meet U.S. greenhouse gas emissions targets within 120 days. While the bill has little chance of being enacted, it represents Congress’ first major stand-alone climate bill in almost 10 years. After the bill’s passage, Senate Majority Leader Mitch McConnell (R-Ky.) moved to put the bill on the Senate floor calendar, a maneuver that bypasses committee consideration.

5/2/19 – DOI’s Bureau of Safety and Environmental Enforcement (BSEE) published a final rule revising the agency’s 2016 Blowout Preventer Systems and Well Control Rule, which was put into place in response to the 2010 Deepwater Horizon oil spill in the Gulf of Mexico. Under the new rule, BSEE no longer must approve the contractors that oil and gas companies pick to evaluate their well equipment. The list of equipment that must be on hand at rigs would become nonbinding. And real-time monitoring requirements, including...
4/29/19 – The Environmental Protection Agency (EPA) Region 6 issued a proposed rule which states that it may be inappropriate to impose a civil penalty on sources—power plants, refineries and other industrial plants—for sudden and unavoidable emissions caused by circumstances beyond the control of the owner or operator,” and that EPA Region 6 recognizes that even equipment that is properly designed and maintained can sometimes fail." The rule would withdraw a 2015 finding that Texas’s State Implementation Plan (SIP) is substantially inadequate to comply with the Clean Air Act (CAA) because of state rules that provide an affirmative defense for excess air emissions that occur during upsets and unplanned maintenance, startup, and shutdown activities. While EPA’s proposed action only affects Texas, the proposal states that the Region 6 Regional Administrator is “considering reinstating EPA’s policy that affirmative defense provisions in the SIPs are generally approvable in the states in Region 6.”

4/25/19 – The Bureau of Land Management released a draft environmental impact statement concerning the potential impacts of hydraulic fracturing on more than 1 million acres in California. The action, if finalized, would end a five-year moratorium on leasing federal land in California to oil and gas developers. In 2013 a federal judge ruled that the government had violated the National Environmental Policy Act when it issued oil leases in Monterey County without analyzing the environmental dangers of fracturing.

From Congress

5/23/19 – The Senate Armed Services Committee is proposing a three-year phaseout of the military’s use of PFAS chemicals in firefighting foam, according to a summary of the fiscal 2020 National Defense Authorization. The bill would prohibit the Defense Department from procuring firefighting foam that includes PFAS chemicals after Oct. 1, 2020. A senior committee aide said it includes an exemption for all ships and submarines. This follows comments from Representative Fred Upton (R-Mich.), former Chairman of the House Energy and Commerce Committee that "We’re going to use all the tools in the toolbox to see what we can do to help our communities."

5/20/19 – Forty-one Democratic senators wrote to the leadership of the Senate Environment and Public Works Committee, asking the members to prioritize climate and resiliency investments in the upcoming surface transportation authorization.

5/15/19 – Phillip Swagel will replace Keith Hall in early June as director of the Congressional Budget Office. He previously served as an assistant Treasury secretary during the George W. Bush administration.

5/1/19 – The House Natural Resources Committee approved a bill, 22-14, that would bar oil and gas drilling in the Arctic National Wildlife Refuge. Specifically, the Arctic Cultural and Coastal Plain Protection Act, would repeal a key component of the 2017 tax law that opened the wildlife refuge to drilling. The bill is unlikely to be approved by the Senate.

4/29/19 – Legislation that would require EPA to address the level of PFAS in drinking water was introduced in the House with a number of committee chairman signed on as co-sponsors. Specifically, the bill would require EPA to publish a maximum contaminant level goal and promulgate a national primary drinking water regulation for total PFAS.

From the Administration

5/23/19 – EPA announced a proposed drinking water limit of 56 micrograms per liter for the chemical perchlorate and also requests public comment on three other options: a limit of 18 micrograms per liter, a limit of 90 micrograms per liter, and the withdrawal of the agency’s 2011 decision that perchlorate should be regulated in drinking water. Even EPA’s suggested limit of 56 micrograms exceeds the agency’s 2009 health advisory level of 15 micrograms per liter for the chemical. The proposal is the result of a court requirement to publish a limit by May 28 following its failure to set a limit in the two-year window since its 2011 decision that the chemical should be regulated. Perchlorate is the only new contaminant that EPA has publicly
said warrants a drinking water regulation since the Safe Drinking Water Act was amended in 1996. The proposal will be open for public comment for 60 days once it runs in the Federal Register.

5/22/19 – The Administration released its Spring 2019 Regulatory and Deregulatory Agenda that included a number of important updates for forthcoming agency actions. Most important for states, the agency plans to propose an update to its guidance for states on their Clean Water Act veto authority by August and aims to finalize that guidance by May 2020. Related, EPA plans to update its regulations governing the process for states to take over the Clean Water Act 404 permitting program, with a goal of proposing the update in March of 2020 and finalize it a year later. These two actions are closely related to the agency’s effort to rescind and revise the 2015 Clean Water Rule that sought to define a Water of the United States, which EPA is aiming to wrap up by the end of the year. Another important future rule is the agency’s update to the lead and copper rule, with a proposal now slated for July and a final rule expected a year later. Further, the agency also formally added its plans to determine whether to set a drinking water limit for the chemicals PFOA and PFOS with a goal of making a proposal by the end of the year and finalize it a year later. The agency is planning to propose a rule setting a greenhouse gas emissions standard for jet engines by September. The forthcoming rule is critical for jet engine manufacturers whose products will need to be certified under a 2016 greenhouse gas agreement with the International Civil Aviation Organization. Unlike the 2018 Fall Unified Agenda, the new report did not include any overall statistics on the number of rules repealed, revised or passed, or detail any specific cost savings to the federal government. For more information on the Unified Agenda read NCSL’s Info Alert here.

5/8/19 – EPA issued a proposed decision, which would decline New York’s administrative petition from March 2018 to limit release of nitrogen oxides from facilities in other states that was limiting its own ability to meet federal compliance levels. Under the CAA, EPA is required to address emissions from upwind states that undercuts downwind states’ ability to meet National Ambient Air Quality Standards for ozone and other pollutants. In 2015, EPA tightened the ozone limit to 70 ppb, which New York City is not currently in compliance with.

5/3/19 – The White House announced the nomination of Robert Wallace to be assistant secretary for the Fish and Wildlife Service. Wallace, a Wyoming native, worked for 17 years as the government relations manager for GE Power, a unit of General Electric that sells technology for nuclear, coal and renewable energy power plants. He also worked as the Republican staff director for the Senate Energy and Natural Resources committee for three years during the George H.W. Bush administration.

5/1/19 – EPA Administrator Andrew Wheeler appointed Gregory Sopkin, a former chairman of the Colorado Public Utilities Commission, to run the agency’s Region 8, which covers Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming and 27 tribal nations.

4/30/19 – In response to recent events affecting crop production, EPA proposed "management measures" for the herbicide glyphosate to reduce drift, while including a proposed mandate that labels disclose the risk of herbicide resistance. The proposal also strongly reaffirms its 2017 conclusion that glyphosate does not pose a cancer risk to humans but notes that glyphosate poses "potential risk" to mammals and birds only where the herbicide is sprayed, but risks could be spread to plants in the ground and in water if the chemical drifts. The agency will take public comments on the proposal for 60 days.

4/29/19 – EPA announced the availability of nearly $87 million in grant funding to assist states, tribes, and territories with improving drinking water from two new EPA drinking water grant programs established by the Water Infrastructure Improvements for the Nation Act (WIIN). The Voluntary Lead Testing in Schools and Child Care grant program will award $43.7 million in grants to fund testing for lead in drinking water at schools and child care programs. Testing results carried out using grant funds must be made publicly available. Assistance for Small and Disadvantaged Communities grant program will award $42.8 million in grants to support underserved communities with bringing public drinking water systems into compliance with the Safe Drinking Water Act. Funding can also
be used for conducting household water quality testing, including testing for unregulated contaminants.

From the Courts

5/6/19 – The U.S. District Court for Northern California ordered EPA to respond to state implementation plans on how to reduce methane pollution from landfills as well as develop a federal plan for those states that do not come up with their own. Specifically, EPA has four months to decide on five states’ plans that are pending before EPA—California, New Mexico, Arizona, Delaware and West Virginia—as well six months to write a federal clean-up plan to apply to states that have not written their own.