Top Stories

6/26/19 – The Senate passed its FY 2020 National defense authorization Act (NDAA), S. 1790, that includes a host of provisions aimed at addressing toxic chemical contamination in drinking water. This includes compromise legislation from the Senate Environment and Public Works Committee that would require the Environmental Protection Agency (EPA) to set an enforceable drinking water limit within two years for the chemicals PFOA and PFOS, the two best-studied chemicals in the PFAS class. Further, the Defense secretary would be required to finalize a cooperative agreement with states and local water utilities to add testing, removal and remedial actions for PFAS contamination. The Senate NDAA measure must now be reconciled with the House's version which is likely to include even stronger measures addressing PFAS.

6/24/19 – EPA released a proposed rule that would update its National Emission Standards for Hazardous Air Pollutants program. Previously, sources of industrial pollution were required to apply "the maximum achievable control technology" to limit emissions and had to continue meeting this standard even if their emissions fell back below the thresholds—often referred to as "once in, always in." The proposal would allow emissions limits set by state, local and tribal air pollution control agencies to be recognized as effective controls. The change would let as many as half of the 7,920 major sources in the U.S. qualify as area sources, according to an EPA press release.

6/24/19 – The U.S. House of Representative passed its second FY 2020 minibus appropriations bill that contained five of the 12 appropriations bills. They previously passed a minibus bill containing four appropriations bills. Three of the five appropriations bills including Agriculture, Interior-Environment, and the Transportation-Housing cover items under Natural Resources and Infrastructure Committee jurisdiction. The agriculture bill, which funds USDA, would provide just over $24 billion in discretionary funding, more than $5 billion above the level requested by the president. The Interior-Environment bill, which funds the Department of Interior (DOI) and EPA would provide a 7.5% increase to EPA compared to current levels and a 6.4% to DOI. The Transportation portion would fund the Department at nearly 7% above the president's request.

6/21/19 - The White House Council on Environmental Quality released new draft guidance laying out steps federal agencies should use to incorporate the impacts of greenhouse gases (GHG) into their reviews under the National Environmental Policy Act which applies to permitting new energy and infrastructure projects. While former guidance generally, but not always, required a federal agency to quantify the extent of a project's GHG emissions, the new draft guidance would only require agencies conduct such actions when "a sufficiently close causal relationship exists between the project and carbon emissions." It also provides agencies with reasoning for when such quantification is not required if it "would be overly speculative." Federal courts have blocked a number of energy infrastructure projects over the past years after finding that the NEPA analysis accompanying the project's certification did not appropriately address its carbon emissions.

6/20/19 – The House Committee on Energy & Commerce held a hearing, "Driving in Reverse: The Administration's Rollbacks of Fuel Economy and Clean Car Standards," in response to a letter that 17 major automaker corporations wrote to President Donald Trump and to Governor Gavin Newsom (D-Calif.). The letter called for "one national standard that is practical,
achievable, and consistent across 50 states … a final rule supported by all parties—including California.” Many committee members at the hearing agreed with the automakers that California and the federal government must come to a unified agreement for a singular standard.

6/19/19 – EPA released the Affordable Clean Energy (ACE) final rule, replacing the 2015 Clean Power Plan (CPP). The ACE final rule establishes emission guidelines for states to use when developing plans to address greenhouse gas (GHG) emissions from coal-fired electric generating units (EGUS), without setting individual state GHG emission limits, which was a primary component of CPP. For more information on the rule read NCSL’s Info Alert here.

6/19/19 – The Senate Environment and Public Works Committee approved a bill that would, if enacted, require the federal government to take a number of actions regarding the regulation of PFAS. PFAS, or polyfluoroalkyl substances, are man-made chemicals that may lead to adverse human health effects. The required actions include EPA setting enforceable drinking water limit within two years for at least the two best-studied chemicals in the class, PFOA and PFOS, public reporting on emissions and data reporting under the Toxic Substances Control Act, as well as taking action on additional chemicals within the PFAS family as it learns more about their presence in water and impacts to human health. The bill has already been submitted as an amendment to the FY 2020 National Defense Authorization Act, which is likely the quickest way for the bill to be enacted.

6/17/19 – The Supreme Court held 6-3 in Virginia Uranium v. Warren that Virginia’s statute prohibiting uranium mining isn’t preempted by the federal Atomic Energy Act (AEA). Virginia law “flatly” prohibits uranium mining in the state. The Supreme Court rejected Virginia Uranium’s arguments that the AEA preempts this ban. For more information read the blog from the State and Local Legal Center.

6/14/19 – The National Oceanic and Atmospheric Administration predicted that the Gulf of Mexico’s hypoxic zone—an area where runoff from farms and other operations has depleted oxygen in the water, killing off or driving away marine life—will span more than 7,800 square miles. The Environmental Protection Agency’s Mississippi River/Gulf of Mexico Hypoxia Task Force announced in 2015 that its goal is to reduce the five-year annual average size of the zone to below 1,900 square miles by 2035. That will require reducing the nitrogen and phosphorous content in the watershed by 45 percent.

6/14/19 – The president issued an executive order requiring federal agencies to reduce the number of advisory committees. According to General Services Administration (GSA,) the federal government has more than 1,000 active advisory committees, 601 of which are required by various statutes. The order limits the number of committees not required by law to 350. GSA previously reported that the federal government spent $384 million on advisory committees in fiscal 2018.

6/7/19 – EPA issued revised guidance on implementing Section 401 of the Clean Water Act as directed by the president via an executive order. Historically, Section 401 has provided states and tribes with the authority to review and approve, condition, or deny any federal permits or licenses that may be required if the project seeking a permit would result in a discharge of pollutants into Waters of the United States. The newly issued guidance alters the 2010 guidance significantly, with revisions focusing on: statutory and regulatory timelines for review and action on a CWA 401 certification, the scope of CWA Section 401 certification conditions, and information within the scope of a state or authorized tribes CWA Section 401 review. For more information on the guidance read NCSL’s Info Alert here.

5/30/19 – EPA finalized regulatory changes to allow gasoline blended with up to 15% ethanol (E15) to be sold year-round. Previously, E15 sales faced restrictions during summer months. The agency’s decision was based on a reinterpretation of the Clean Air Act which gives the agency a waiver authority it can apply to all fuels that contain at least 10% ethanol, rather than only blends between 9 and 10% that it had previously said could receive waivers from air pollution limits. EPA declined to use its authority in 2010 and again in 2011 to issue a waiver under the Clean Air Act to allow summertime sales of E15 blends. The oil industry is expected to challenge this interpretation in court. EPA also finalized provisions that would
increase the agency’s monitoring of the trade in compliance credits under the Renewable Fuel Standard. Specifically, entities and their subsidiaries that hold the Renewable Identification Numbers would be forced to disclose their positions once they reach a threshold of 3% of the annual total number of RINs for conventional ethanol. EPA could act if it found evidence of manipulation.

From Congress

6/12/19 – A bipartisan group of U.S. House members introduced H.R. 3195 which would permanently provide mandatory annual full funding for the Land and Water Conservation Fund, removing it from the annual appropriations process. The initial sponsors are Rep. Jeff Van Drew (D-N.J.) and Natural Resources Chairman Raúl Grijalva (D-Ariz.) Jared Huffman (D-Calif.), Brian Fitzpatrick (R-Pa.), Lee Zeldin (R-N.Y.), John Katko (R-N.Y.) and Deb Haaland (D-N.M.).

From the Administration

6/24/19 – EPA proposed giving Georgia the authority over coal ash permitting in the state, which, if finalized, would make it the second state to gain that oversight power. The Water Infrastructure Improvements for the Nation (WIIN) Act of 2016 granted EPA the authority to approve of state permit programs.

6/21/19 – EPA announced new, tighter standards for lead in dust on floors and window sills to protect children from the harmful effects of lead exposure. EPA is lowering the dust-lead hazard standards from 40 micrograms of lead per square foot (µg/ft²) to 10 µg/ft² on floors and from 250 µg/ft² to 100 µg/ft² on window sills. The more protective dust-lead hazard standards will apply to inspections, risk assessments, and abatement activities in pre-1978 housing and certain schools, child care facilities and hospitals across the country.

6/12/19 – The U.S. Forest Service (USFS) released proposed changes to modernize how the agency complies with the National Environmental Policy Act (NEPA). The updates would create a new suite of “categorical exclusions,” a classification under the NEPA excluding certain routine activities from more extensive analysis under an environmental assessment or environmental impact statement. The proposed categorical exclusions would be for restoration projects, roads and trails management, recreation and facility management, as well as special use authorizations. Under current law, three levels of analyses depend on whether a federal action would significantly impact the environment.

6/11/19 – The Food and Drug Administration (FDA) issued a statement in response to reports that the agency detected non-stick chemicals known as PFAS in meat, fish, produce and other foods. The statement determined the products "were not likely to be a health concern at the levels" found during recent testing and that "Overall, our findings did not detect PFAS in the vast majority of the foods tested. These data give our scientists a benchmark to use as we continue our critical work studying this emerging area of science." Two of the most-studied forms, PFOS and PFOA, are linked to kidney and testicular cancer, thyroid disease and other ailments.

6/3/19 – In a memorandum to EPA regional administrators, EPA Assistant Administrator for Office of Water David Ross directed regional offices to comply with statutory deadlines for acting on state and tribal CWA submittals while improving responsiveness in the agency’s oversight role.

6/3/19 – EPA and the Federal Emergency Management Agency reached an agreement that would allow municipalities stricken by disasters to apply for no- or low-interest loans through the EPA-funded State Revolving Fund programs for repairs to drinking water and wastewater infrastructure. FEMA would then reimburse the loan repayments. This is in comparison to current realities where communities have to pay out of pocket for disaster recovery and are only reimbursed by FEMA grants once Congress passes disaster relief funding legislation. However, EPA still must still reevaluate whether it could waive requirements in the Clean Water Act and Safe Drinking Water Act which require that funds appropriated from State Revolving Funds only use American iron and steel.

5/29/19 – EPA proposed adding two toxic areas to its National Priorities List of Superfund sites. The sites EPA is considering are the Schroud property in Chicago, which was used to store
and dump waste from steel manufacturing, and an arsenic mine site in Kent, N.Y., where a metal ore that was used in pesticides and other industries was collected.

5/28/19 – EPA Administrator Andrew Wheeler appointed Mary Walker, a longtime Georgia state official who has worked at EPA since 2016, as the new Region 4 administrator. The position, which oversees EPA work in Alabama, Florida, Georgia, Kentucky, North Carolina, Mississippi, South Carolina and Tennessee, does not require Senate confirmation.