

Proposed EPA Rulemakings: Clean Water Act and Safe Drinking Water Act April 2020

Safe Drinking Water Act Rulemakings

Lead and Copper Rulemaking: EPA's proposed Lead and Copper Rule Revisions (LCRR) includes a suite of actions to reduce lead exposure in drinking water where it is needed the most. The proposed rule will identify the most at-risk communities and ensure systems have plans in place to rapidly respond by taking actions to reduce elevated levels of lead in drinking water. The proposed LCRR retains the current Maximum Contaminant Level Goal (MCLG) of zero and the Action Level (AL) of 15 ppb. The proposed rule will require a more comprehensive response for systems that exceed the AL and introduces a new trigger level of 10 ppb that requires systems to re-optimize existing treatment, plan for potential treatment and, where applicable, establish lead service line replacement goals.

Key dates: Proposed rule published in federal register on November 13, 2019. Comment period closed on February 12, 2020. A final rule is expected in November 2020.

PFAS: On February 20, 2019, EPA announced its proposed decision to regulate PFOA and PFOS in Drinking Water. EPA is seeking public comment on its proposed regulatory determinations for eight contaminants listed on the fourth Contaminant Candidate List. The Agency is proposing to regulate two contaminants, PFOS and PFOA. EPA is also asking for information and data on other PFAS substances, as well as seeking comment on potential monitoring requirements and regulatory approaches EPA is considering for PFAS chemicals. The Agency is proposing to not regulate six contaminants: 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX. On February 26, 2020 EPA released the [PFAS Action Plan: Program Update February 2020](#).

Key dates: Public comment period for the proposed regulatory determination closes on May 11, 2020. A final regulatory determination is expected in January 2021. If a positive determination is made, the proposed MCL would be expected in January 2023 (24 months after positive determination), and the final MCL in July 2024 (18 months after proposed MCL).

Clean Water Act Rulemakings

Navigable Waters Protection Rule (NWPR): Waters subject to CWA jurisdiction are called Waters of the United States. EPA and Army Corps of Engineers (ACE) define Waters of the US through rulemaking and on January 23, 2020, the agencies announced a final rule. The NWPR was published in the Federal Register on April 21 and will take effect on June 22, 2020. The final rule excludes ephemeral streams and wetlands lacking direct hydrologic surface connections with navigable waters and their tributaries from CWA jurisdiction.

Revisions to §401 Regulations and Guidance: States, territories, and authorized tribes certify that federal permits, such as §404 permits issued by ACE, are consistent with state water quality laws. In response to an Executive Order, EPA issued new guidance on June 7, 2019, for federal permitting agencies and state/tribal authorities to clarify §401 requirements, replacing interim guidance from 2010. On August 22, 2019, EPA released a proposed rule which would limit the scope of §401 certifications to be based only on water quality standards and requires certifying authorities to submit §401 certification conditions within specific time frames. The comment period for the proposed rule closed on October 21, 2019. A final rule is expected in May 2020.

Peak Flows at Sewage Treatment Plants Rulemaking: In April 2018, EPA announced a new rulemaking to look at issues associated with the management and treatment of peak flows during wet weather events at publicly owned treatment works (POTWs) with separate sanitary sewer systems. Through this rulemaking, EPA will evaluate changes to its National Pollutant Discharge Elimination System (NPDES) regulations to establish a transparent and lasting framework to permitting peak flow management options. The proposed rule is expected by Spring 2020.

Compensatory Mitigation Rule Revisions: Impacts to aquatic resources permitted under §404 are required to be offset through compensatory restoration or protection of other aquatic resources. EPA and ACE jointly issued a rule defining minimum requirements for compensatory mitigation in 2008.

Proposal: ACE and EPA are considering several changes to the 2008 regulations including, eliminating Interagency Review Teams (IRTs), requiring stream crediting to be done in acres rather than linear feet or functional units, clarifying crediting of multi-purpose banks, and a few other relatively minor clarifications.

Key dates: Pre-proposal comment period closed on August 9. A proposed rule is expected to be published in the Federal Register in the first half of 2020.

Revisions to State and Tribal §404 Assumption Regulations: States and tribes are authorized to assume the federal §404 permitting program under §404(g). To date, only two states (Michigan & New Jersey) have assumed the §404 program. In the 2018 Spring Regulatory Agenda, EPA published a plan for a revision to existing §404(g) regulations to increase state and tribal interest in assuming the §404 program. In September 2018, EPA sent letters to state governors and tribal leaders announcing the rulemaking effort and opportunities for input. A final rule is expected in 2021.

404(c) “Veto” Rule Revisions: EPA has the authority to veto §404 permits under CWA §404(c). On June 26, 2018, the Administrator signed a memorandum indicating that EPA will propose revisions to the regulations implementing §404(c), including eliminating the authority to preemptively or retroactively veto permits, and requiring EPA Regions to obtain EPA HQ approval before initiating a §404(c) process. A draft rule is expected to be released for public comment in the first half of 2020.