

# New EPA Water Regulations, Guidance and Policy

## Schedule description 9-15-2017

Activity	Schedule description 9-15-2017		Staff Contact
<b>Rulemakings</b>			
<b>Office of Wastewater Management (OWM)</b>			
<b>NPDES Updates Rule</b>	Proposed: May 18, 2016 Extended Comment Deadline: Aug. 2, 2016 Final: Late Spring 2018	EPA is proposing to update the NPDES regulations in order to eliminate inconsistencies between regulations and application forms, improve permit documentation and transparency, and provide clarifications to the existing regulations. Likely updates include: definition updates, application requirements for vessels and pesticides, effluent limit bases--max daily/average monthly for POTWs, reasonable potential, conflicts of interest, fact sheet requirements, public notice requirements, §401 certification process, antibacksliding, antidegradation, and objection to administratively continued permits. The proposed rule was published in the Federal Register at: <a href="https://federalregister.gov/a/2016-11265">https://federalregister.gov/a/2016-11265</a> <del>ACWA's Permitting &amp; Compliance Committee has provided extensive feedback on the proposed rule.</del>	Sean Rolland
<b>MS4 Remand Rule</b>	Final: December 2016	EPA finalized changes proposing changes to the regulations governing small municipal separate storm sewer system (MS4) permits to respond to a remand from the 9th Circuit Court of Appeals legal decision ( <i>Environmental Defense Center, et al. v. EPA</i> , 344 F.3d 832 (9th Cir. 2003)). The final rule is intended to ensure that the permitting authority determines the adequacy of BMPs and other requirements and provide public notice and the opportunity to request a public hearing on the requirements for each MS4. Copy of the final rule can be found here: <a href="https://www.epa.gov/npdes/npdes-stormwater-final-ms4-general-permit-remand-rule">https://www.epa.gov/npdes/npdes-stormwater-final-ms4-general-permit-remand-rule</a>	Sean Rolland
<b>Steam Electric Rule</b>	Compliance Date Postponement Proposed: September 2017	In March 2017, EPA received several petitions for administrative reconsideration of the final rule (published September 2015). In August 2017 EPA informed the petitioners and the public that it would reconsider the rule and of the plans to postpone impending deadlines as a temporary stopgap measure "to prevent the unnecessary expenditure of resources until the agency completes reconsideration of the 2015 rule." In September, 2017 EPA published proposed postponement of certain compliance dates. <a href="https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule">https://www.epa.gov/eg/steam-electric-power-generating-effluent-guidelines-2015-final-rule</a> This rule has been challenged and is being litigated by environmental groups and industry alike. <del>ACWA's new Cooling Water Steam Electric Workgroup continues to assist states and EPA with implementation</del>	Sean Rolland
<b>Cooling Water Intake Structures 316(b) Rule</b>	Final: Aug. 15, 2014	CWA Sect. 316(b) requires that the location, design, construction and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. The rule was sent to OMB on July 30, 2013, for pre-publication review. EPA released a pre-publication version of the final rule on May 19, 2014, available here: <a href="http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/">http://water.epa.gov/lawsregs/lawsguidance/cwa/316b/</a> This rule has been challenged and is being litigated by environmental groups and industry alike. <del>ACWA's new Cooling Water Steam Electric Workgroup continues to assist states and EPA with implementation</del>	Sean Rolland
<b>Office of Wetlands, Oceans and Watersheds (OWOW)</b>			
<b>Waters of the U.S. Rule (a.k.a. Clean Water Rule)</b>	Draft Guidance sent to OMB: Feb. 2012 Proposed Rule Sent to OMB: Sept. 17, 2013 Draft version of rule leaked: Nov. 17, 2013 Proposed: April 21, 2014 Comment Deadline: Nov. 14, 2014 ACWA Comments: Nov. 12, 2014 Final: June 29, 2015 Effective Date: Aug. 28, 2015 Stay: October 9, 2015	In May 2011, EPA and the Army Corp of Engineers (Corps) released for public comment draft guidance for determining whether a waterway, waterbody, or wetland is jurisdictional as a Water of the U.S." ("WoUS") under the CWA. EPA received 230K comments on the draft "WoUS" guidance document. On 9/17/13, EPA and the Corps announced that they had withdrawn the guidance from OMB and sent to OMB a proposed rulemaking instead. Existing 2008 guidance remains in place. On 11/7/2013, a version of the draft proposed rule was leaked to the press. EPA indicated that the leaked version is not the final version sent to OMB. On 4/21/14, EPA published the proposal in the Federal Register, along with an associated "Interpretive Rule" on exemptions from CWA jurisdiction for certain agricultural conservation practices. On Jan. 9, 2015, EPA and the Corps withdrew the Interpretive Rule. The final rule was published in the Federal Register on 6/29/15 and made effective on 8/28/15. On October 9, 2015, the U.S. Court of Appeals for the Sixth Circuit stayed the WoUS Rule. The EPA and Corps resumed using the previous regulations and case law defining "WoUS." ACWA will work with EPA/Corps on coordinating opportunities for states to discuss implementation questions and training needs. Procedural litigation concerning venue is	Julian Gonzalez
<b>"Waters of the United States" – Recodification of Pre-existing Rules aka "Step 1" of WOTUS Revision</b>	Executive Order: Feb., 2017 Notice of Intent: March, 2017 Proposed: June 2017	In February 2017, the White House released and Executive Order titled "Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the 'Waters of the United States' Rule", expressing the intent (and reasoning) for initiating an EPA rulemaking to review, repeal, and replace the existing Waters of the U.S. Rule. This rulemaking, known as "step 1" in that process, aims to repeal the 2015 rule and recodify the pre-2015 rule status quo. On 6/27/17 EPA proposed the rule. On 8/22/17, EPA extended the comment deadline 30 days to 9/27/17.	Julian Gonzalez

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<b>Office of Science and Technology (OST)</b>			
<b>Effluent Limitation Guidelines and Standards for the Dental Category</b>	Proposed: Oct. 22, 2014 Public Hearing: Nov. 10, 2014 Comment Period: Closed Feb. 20, 2015 ACWA and Quicksilver Caucus Comments: Feb. 20, 2015 Final Rule Signed: December 15, 2016 Held From Final Publication due to White House memorandum: January 20, 2017 Final: June 14, 2017	EPA proposed technology-based pretreatment standards under the CWA for discharges of pollutants into POTWs from existing and new dental practices that involve the discharge of dental amalgam. The proposal requires dental practices to comply with requirements for controlling the discharge of dental amalgam pollutants into POTWs based on the best available technology or best available control technology and Best Management Practices. EPA Administrator Gina McCarthy signed the final rule on December 15, 2016. Due to a White House memorandum released on January 20, 2017, final publication in the Federal Register was put on hold. The rule was finally published in the Federal Register on June 14, 2017. You may view it here: <a href="https://www.federalregister.gov/documents/2017/06/14/2017-12338/effluent-limitations-guidelines-and-standards-for-the-dental-category">https://www.federalregister.gov/documents/2017/06/14/2017-12338/effluent-limitations-guidelines-and-standards-for-the-dental-category</a> .	Patrick McGuire
<b>Recreational Ambient Water Quality Criteria/Swimming Advisories for Cyanotoxins</b>	Proposed: Dec. 2016 Comment Period: Closed Mar. 20, 2017 ACWA Comments: Mar. 20, 2017	EPA proposed a recreational ambient water quality criteria for cyanotoxins, which was later changed to a criteria or an advisory. This criteria/advisory focuses on microcystin and cylindrospermopsin concentration in fresh waters.	Frances Bothfeld
<b>Analytical Methods Rule</b>	Final: December 2016 Held from Final Publication by Executive Order Final: August 2017	Analytical methods are used by industries and municipalities to analyze the chemical, physical, and biological components of wastewater and other environmental samples that are required by regulations under the CWA. Specific CWA examples of where these analytical methods show up include: (1) applications for NPDES permits, (2) sampling or other reports required under NPDES permits, (3) other requests for quantitative or qualitative effluent data under the NPDES regulations, (4) State CWA 401 certifications and (5) sampling and analysis required under EPA's General Pre-Treatment Regulations for Existing and New Sources of Pollution 40 CFR 136.1 and 40 CFR 403.12(b)(5)(v). EPA indicated the final changes were designed to increase flexibility for the regulated community, improve data quality, and update CWA methods to keep current with technology advances and analytical methods science. Final rules can be found here: <a href="https://www.epa.gov/cwa-methods/methods-update-rule-2017">https://www.epa.gov/cwa-methods/methods-update-rule-2017</a> .	Frances Bothfeld
<b>Guidance &amp; Policy</b>			
<b>Select Non-Rulemaking Efforts &amp; Other Developments</b>			
<b>2016 Preliminary Effluent Guidelines Program Plan</b>	2016 Preliminary Proposed: June 27, 2016 Comment Deadline: July 27, 2016 Expected: TBD 2017	On June 27, 2016, EPA released the Preliminary 2016 Effluent Guidelines Program Plan. See more on the Plans here: <a href="http://water.epa.gov/scitech/wastetech/guide/304m/index.cfm">http://water.epa.gov/scitech/wastetech/guide/304m/index.cfm</a>	Patrick McGuire
<b>Draft National Water Program Guidance FY2018-2019</b>	Draft Released: July 5, 2017 Comment Deadline: August 4, 2017 Final: TBD 2017	EPA OW released the Draft National Water Program Guidance FY 2018-2019 on July 5, 2017. ACWA submitted comments on the Guidance on July 28, 2017. EPA has stated that they plan to issue a final version at some point in 2017. Furthermore, EPA stated that it will edit the Guidance as more information comes out on the federal budget.	Patrick McGuire

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<b>Assumable Waters Subcommittee</b>	Meeting 1: Oct. 6-7, 2015 Meeting 2: December 1-2, 2015 Meeting 3: March 15-17, 2016 Meeting 4: June 7-9, 2016 Meeting 5: October 2016 Meeting 6: December 2016 Meeting 7: January 2017 Meeting 8: April 2017 Final Report: May 2017	The Assumable Waters Subcommittee has been convened under the National Advisory Council for Environmental Policy and Technology (NACEPT) to provide advice and recommendations on how the EPA can best clarify which waters a state or tribe assumes permitting responsibility for under an approved Clean Water Act (CWA) section 404 program. CWA Section 404 establishes a program to regulate the discharge of dredge and fill material into waters of the United States. Currently the U.S. Army Corps of administers the program in 48 states. The CWA allows states and tribes to assume the administration of the 404(g) program. No tribes and only two states have assumed these permitting responsibilities to date. The committee met 8 times and is due for a final in person meeting. In 12/2016 ACWA, ECOS, ASWM issued jointly authored letter to USACOE concerning the likelihood of the subcommittee not reaching a consensus due to differences of opinion held by USACOE. In March, the committee released a draft final report to ACWA. On 5/10 the committee published the final report and presented its recommendations to NACEPT regarding the issue of Assumption. On 6/2, Nascent accepted the report in its entirety and transmitted it to EPA Administrator Pruitt. On 8/2017, ACWA, ECOS, and ASWM issued a joint letter to EPA expressing support for the efforts of the committee and urging EPA to further work with the three state associations as they work with states to	Julian Gonzalez
<b>Implementation and Evaluation of EPA Measure WQ-28</b>		EPA first included WQ-28 in the National Water Program Guidance in 2015, and did so again in April 2016. ACWA commented shortly thereafter. ACWA and EPA held a call in December 2016 featuring EPA Staff presenting and explaining the WQ-28 Computational Guidance. EPA included it again, slightly edited, in the 2017 National Program Managers Guidance in August 2017.	Julian Gonzalez
<b>EPA Office of Research and Development (ORD) Hydraulic Fracturing Study</b>	Progress Report: Dec. 21, 2012 Draft Report: June 4, 2015 Final Report Issued: Dec 2016	EPA ORD has been developing a study on the potential environmental and human health implications of hydraulic fracturing with special emphasis on the relationship between hydraulic fracturing and drinking water resources. On June 4, 2015, a draft assessment was released by the agency. The study will be finalized after review by the Science Advisory Board and public review and comment. The Federal Register Notice with information on the SAB review and how to comment on the draft assessment was published on June 5, 2015: <a href="https://federalregister.gov/a/2015-13674">https://federalregister.gov/a/2015-13674</a> . The Final Report, as well as companion statements and summaries, was published in December 2016 and is available here: <a href="https://www.epa.gov/hfstudy">https://www.epa.gov/hfstudy</a>	Julian Gonzalez