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Regulatory Changes/Updates

NECA Environmental Conference

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June 15, 2017

■ Executive Orders

- 13771 – 2 For 1
- 13779 – Clean Water Act
- 13783 – Promoting Energy Independence

■ EPA Actions

- Status of draft rules
- Ozone nonattainment area designation extension
- TMDLs and Residual Designation Authority
- Risk Management Program rule compliance extension
- Superfund reform

- In long run, may be most significant
- Clearly intended to freeze major rulemakings
- Applies to “significant” rulemakings
- Meaning of savings clause
- Litigation pending in D.D.C.
- <https://www.federalregister.gov/documents/2017/02/03/2017-02451/reducing-regulation-and-controlling-regulatory-costs>



**2 for 1
special
for a limited
time**

- Requires EPA and ACOE to “review” WOTUS rule
- Publish proposed rule “rescinding or revising” rule “as appropriate and consistent with law
- EPA and ACOE shall consider Scalia *Rapanos* opinion in defining “navigable waters”
- Can you say “ten more years of uncertainty”?



- Review of agency actions that “burden the development or use of domestically produced energy resources”
- Recision of Obama energy and climate EOs
- Withdrawal of CEQ Guidance on consideration of GHG emissions in NEPA reviews
- Review of CPP and related rules.
- <https://www.whitehouse.gov/the-press-office/2017/03/28/presidential-executive-order-promoting-energy-independence-and-economi-1>

■ Status of Draft Rules

– Clean Power Plan

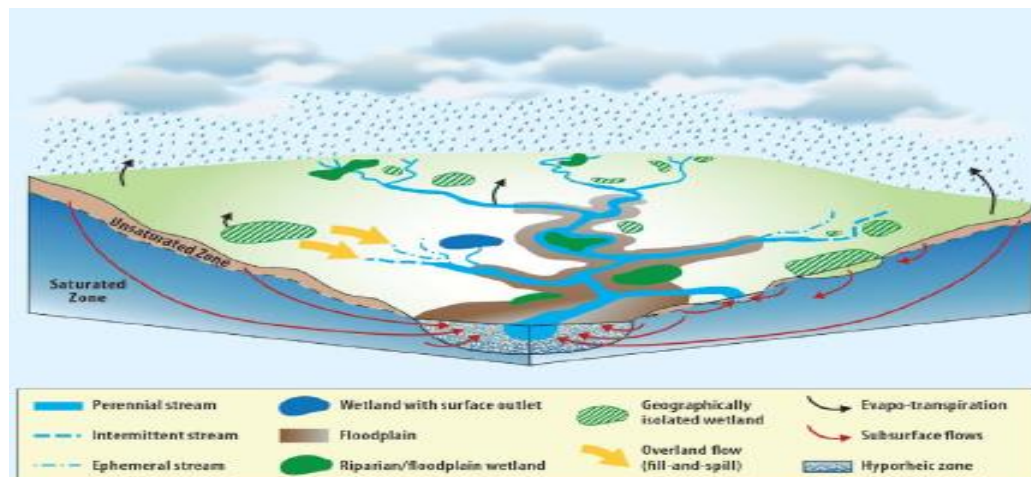
- Draft rule to rescind CPP is apparently complete, but not yet public
- Will apparently rely on the “fenceline” argument
- NGOs and blue states will challenge any rescision
- Nice legal question – how much deference will be given to EPA’s new legal interpretation?
- More litigation to follow



■ Status of Draft Rules

– Waters of the United States

- Pursuant to EO 13779, EPA is revisiting the definition of WOTUS. <https://www.whitehouse.gov/the-press-office/2017/02/28/presidential-executive-order-restoring-rule-law-federalism-and-economic>
- Draft proposed rule for “Step 1” has been sent to OMB – reestablishes pre-2015 status quo pending new rulemaking <https://www.epa.gov/wotus-rule>
- Working on new WOTUS definition consistent with Scalia plurality opinion in *Rapanos*
- More litigation to follow



■ Status of Draft Rules

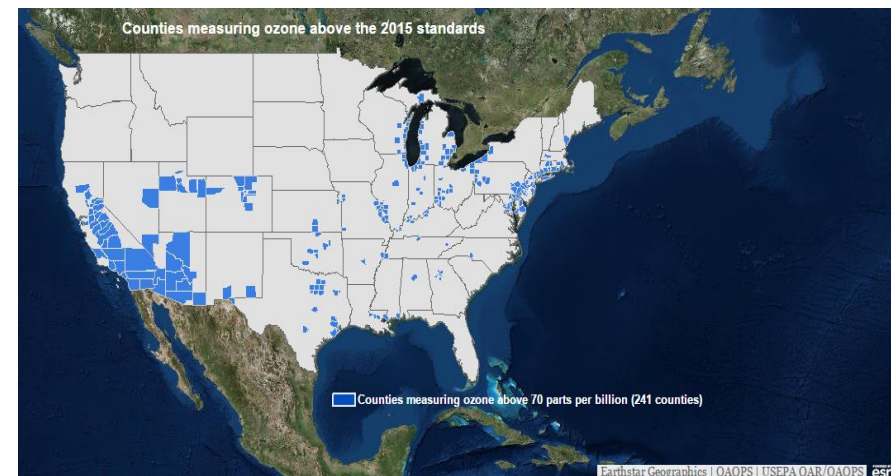
— Steam Electric Power Generating Effluent Guidelines

- Final rule published September 15, 2015
- New standards for toxic discharges from power plants.
- EPA issued proposed rule on June 6, 2017 that would postpone compliance deadlines while it considers petitions to reconsider the rule. <https://www.federalregister.gov/documents/2017/06/06/2017-11221/postponement-of-certain-compliance-dates-for-the-effluent-limitations-guidelines-and-standards-for>
- What is the best available technology economically achievable?
- More litigation to follow

■ 2015 Ozone Standard Implementation

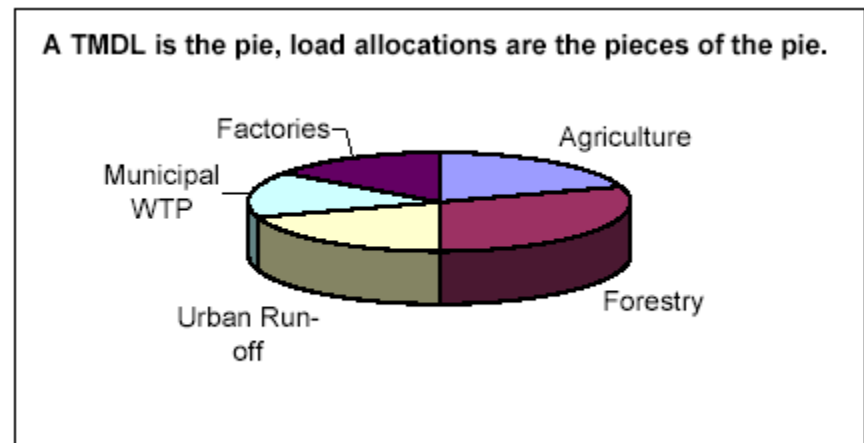
- New ozone standard promulgated in 2015
- Legal challenges and pressure to revise standard
- EPA notice June 6, 2017 extending the deadline for identifying nonattainment area designations.
<https://www.epa.gov/newsreleases/epa-extend-deadline-2015-ozone-naaqs-area-designations>

■ More litigation to follow



■ TMDLs and Residual Designation Authority

- Numerous NGO petitions requesting EPA exercise RDA to require stormwater permits for discharges to water bodies with TMDLs
- NGO position – approval of TMDL necessarily implies determination that stormwater discharges contribute to violation of WQS.
- NGO position rejected in Massachusetts litigation in March 2017. <http://www.lawandenvironment.com/wp-content/uploads/sites/5/2017/03/https-ecf-mad-uscourts-gov-doc1-09517971441.pdf>
- Expect more litigation over TMDL issues



■ Risk Management Program rule

- RMP Rule promulgated January 13, 2017.
- Focus is on accident prevention and emergency response with respect to hazardous chemicals stored in quantities above thresholds.
- Petition for reconsideration filed February 28, 2017.
- On June 9, 2017, EPA signed a final rule extending the compliance deadline 20 months, until February 19, 2019.

https://www.epa.gov/sites/production/files/2017-06/documents/prepub_signed_rmp_final_effective_date_delay_6-12-17.pdf



■ Superfund reform

- Pruitt memorandum regarding Administrator approval of expensive cleanups – cleanups with estimate costs to be approved at headquarters, not regional offices.

https://www.epa.gov/sites/production/files/2017-05/documents/prioritizing_the_superfund_program_memo_5-22-2017.pdf

- Creation of Superfund reform task force.

<https://www.epa.gov/newsreleases/epa-announces-superfund-task-force>





Questions?



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