

Ohio EPA

Division of Surface Water Updates

Mark Johnson,
Ohio EPA
July 17, 2024



**Environmental
Protection
Agency**

Priorities:

- Consistency
- Transparency
- Predictability
- Customer Service
- REGIONALIZATION
- Water Reclamation/Re-Use
- Economic Development



A blue-tinted photograph of industrial pipes. The pipes are arranged in a grid-like pattern, with some showing technical markings. One pipe in the foreground has the text "PACIFIC CAL 4" SDR21 200PSI @ 72" visible. Another pipe in the background has "CAUTION RECLAIMED WATER" visible. The overall scene is dimly lit, emphasizing the industrial nature of the subject.

WWTP-Treated Effluent as Process Water

Ohio is the Midwest's Cloud Infrastructure Hub



- From 2015-22, Amazon Web Services (AWS) invested **\$6.3 billion** into its Ohio data centers
- In June 2023, AWS announced it planned to invest an additional **\$7.8 billion** in Ohio by 2030
- In 2017, Meta announced its initial multi-building data center campus in central Ohio that is LEED Certified Gold
 - Meta's total announced Ohio investment had grown to **\$1.5 billion** as of 2022
- In 2019, Google officially broke ground on a **\$600 million** data center in New Albany
 - In 2023, Google announced two new locations that will bring total investment to more than **\$2 billion**
- In 2021, the Tax Foundation's Location Matters report found Ohio **ranked #1** in new data center corporate tax costs

Economic Impact of the AWS US East (Ohio) Region from 2015-2022

\$6.3 billion

Total investment in Ohio, including both capital and operating expenditures

\$2.2 billion

Estimated total gross domestic product (GDP) contributed to Ohio

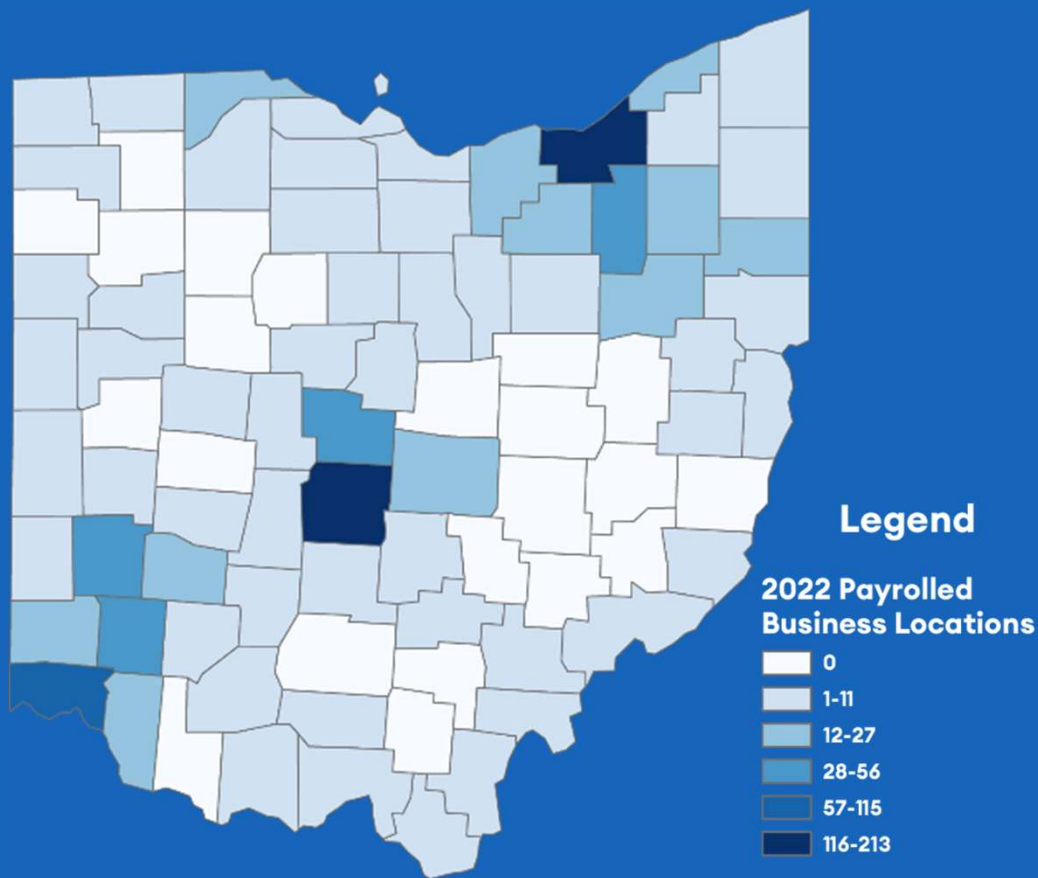
3,550

Estimated average full-time equivalent (FTE) jobs supported at local vendors annually in Ohio

AWS Capital Investment in Ohio



Dramatic Growth in the Data Center Industry over the Past Decade



3X Data Center Growth

In 2011, Ohio had 379 data center locations -

Today, there are over 1,100



Source: Lightcast, 2022 Payrolled Business Locations in NAICS 51-8210: Data Processing, Hosting, and Related Services
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WaterReuse.org



 WATERREUSE
ARIZONA



 WATERREUSE
CALIFORNIA



 WATERREUSE
COLORADO



 WATERREUSE
FLORIDA



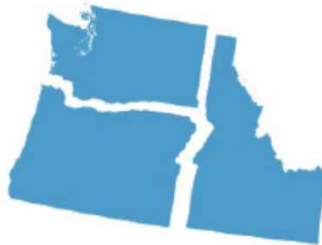
 WATERREUSE
MID-ATLANTIC



 WATERREUSE
NEVADA



 WATERREUSE
NEW MEXICO



 WATERREUSE
PACIFIC NORTHWEST



 WATERREUSE
SOUTH CAROLINA



 WATERREUSE
TEXAS



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H2Ohio

OHIO'S PLAN FOR CLEAN WATER

H2Ohio RIVERS INITIATIVE



The H2Ohio Rivers Initiative is designed to improve water quality, ensure community health, protect wildlife, and provide opportunities for recreation in and along Ohio's rivers & streams.

\$46.6M

Over 2 Years

An expansion of the H2Ohio initiative, the **H2Ohio Rivers Initiative** places an emphasis on the preservation and improvement of our rivers, that provide critical wildlife habitat, drinking water, and recreation space.



River
Restoration



Road Salt
Management



Dam
Removal



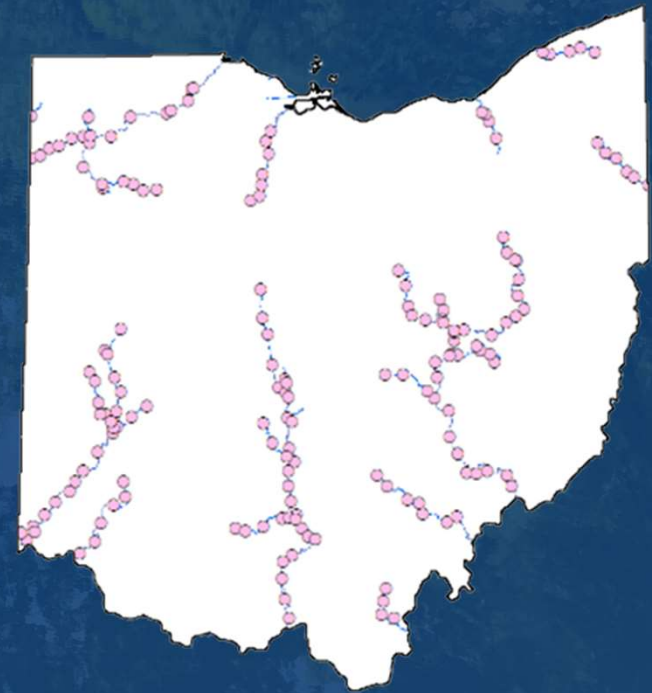
Emerging
Contaminant
Assessment

H2Ohio Rivers Initiative



Emerging contaminants assessment

- Ohio EPA contractors are collecting Fish tissue, Water Column, and Macroinvertebrate tissue samples for PFAS
- Sampling will re-start Spring 2024, completed Fall 2024
- 151 locations statewide, within our Large Rivers.



H2Ohio Rivers Initiative



Dam Removal/Habitat Restoration

- 2023 – \$3,500,000 Funded Troy Dam Removal and Habitat Restoration
- 2023 – \$1,500,000 Funded 2 Piqua Dam Removals

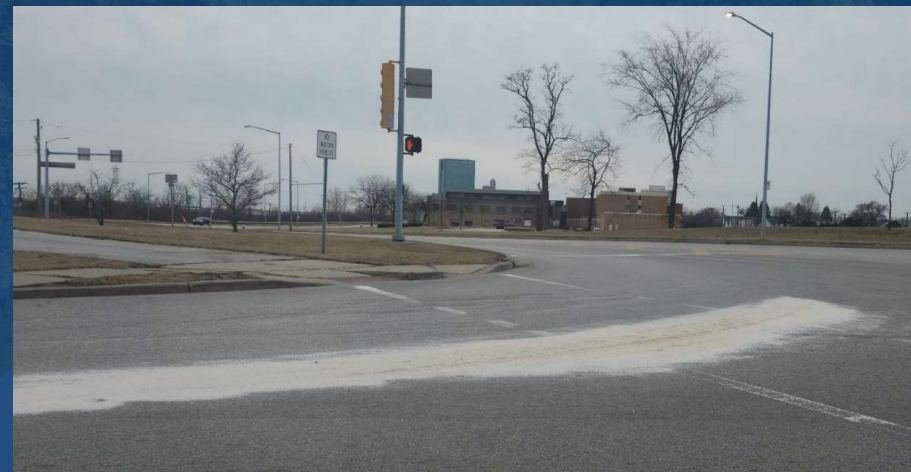
Future Projects?? Let us know!!



H2Ohio Rivers Initiative

Salt Equipment/Facility Upgrade Grants

- Applications closed January 31, 24
- Currently evaluating proposals
- > \$14,500,000 in request
- Awards anticipated Spring 2024



H2Ohio

Rivers Initiative

Chloride Reduction Grant Program Recipients



H2Ohio
Rivers Program

Ohio
Environmental Protection Agency

Ohio
Environmental Protection Agency

DSW Total Phosphorus Optimization

GRANT FUNDS AVAILABLE TO REDUCE PHOSPORUS

- **Eligible Facilities:**

- Municipal WWTPs
- Design flow of 0.5 MGD or more
- Lake Erie Basin

- **Funding Approach:**

- *First round:* fund assessment of alternatives to reduce TP; approx. \$20k each for 10 facilities
- *Second round:* from those 10 facilities, select a few proposals and provide additional funding for full implementation

- **Important Dates:**

- June 1, 2024 Request for Proposals was issued
- Sept 16, 2024 Applications due
- January 2025 Grants awarded
- October 2025 First round deliverable report due

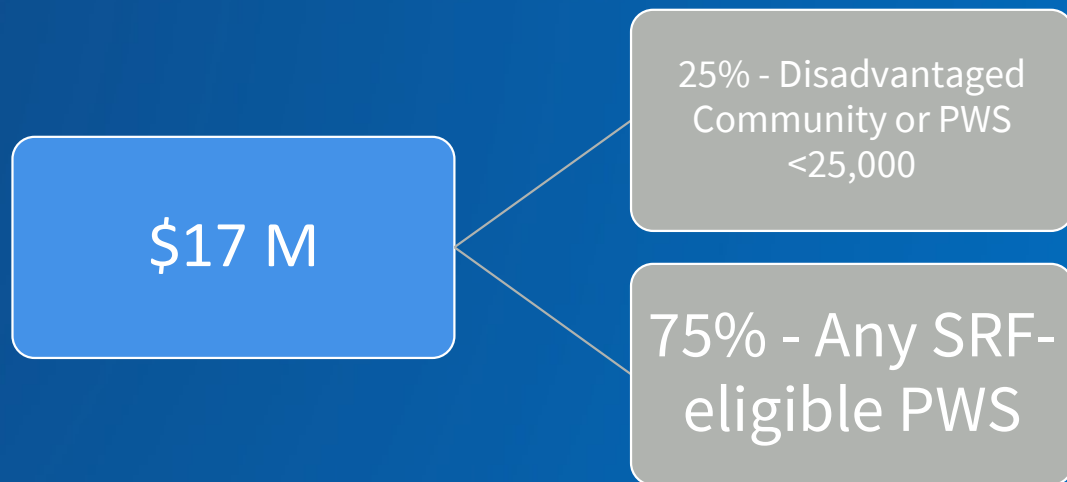
Rough Estimates of Ohio's Portion of IIJA Funds for the SRF Programs

Year	Ohio's CWSRF Portion for Base Program	Ohio's CWSRF Portion for Emerging Contaminants	Ohio's DWSRF Portion for Base Program	Ohio's DWSRF Portion for Emerging Contaminants	Ohio's DWSRF Portion for Lead	Estimated Total
2022	\$102 M	\$5 M	\$45 M	\$19 M	\$71 M	\$242 M
2023	\$117 M	\$12 M	\$47 M	\$17 M	\$166 M	\$359 M
2024	\$128 M	\$12 M	\$52 M	\$17 M	\$166 M*	\$374 M
2025	\$138 M	\$12 M	\$56 M	\$17 M	\$166 M	\$389 M
2026	\$138 M	\$12 M	\$56 M	\$17 M	\$166 M	\$389 M
Total*	\$623 M	\$53 M	\$256 M	\$87 M	\$735 M	\$1.753 B

Proportion of Total that can be awarded as PF	\$305 M	\$53 M	\$125 M	\$87 M	\$360 M	\$930M
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Drinking Water Emerging Contaminants Projects

- ~\$17 million principal forgiveness per year 2022-2026
- Targeted at unregulated contaminants on U.S. EPA Contaminant Candidate Lists (CCL)
- Focus on PFAS projects
 - Better Source Water
 - Enhanced Treatment
 - Regionalization
- Potential for planning/design funding
- WIIN – Emerging Contaminants Grant
 - ~\$23 million/year
 - “small or disadvantaged”



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Wastewater Emerging Contaminants Projects

- ~\$12 million principal forgiveness per year 2022-2026
- Focus on PFAS projects
- Potential for planning/design funding
- Examples
 - Analytical Equipment
 - Sewershed Studies
 - Pretreatment

\$12M



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RULE UPDATES!!



Early Stakeholder Outreach

Recently completed:

- New nutrient rule(s): a method to assess nutrient impacts in streams
 - Staff are considering comments prior to drafting rule language
 - Outreach on method implementation will begin soon

Up next:

- Pretreatment rules (OAC Chapters 3745-3 and -36)
- Lake Erie Aquatic Life Use (OAC 3745-1-03, -07, -31)
- Antidegradation (OAC 3745-1-05)

Interested Party Review

Water Quality Variances rule (3745-1-38)

ES0

- Public comment period to start this month.
- Outreach meetings will be held with representative dischargers. ES1

Cuyahoga river b^{ES2}eneficial use designations rule (3745-1-26)

- Public comment period to start after Variances.

Several other rule packages coming within the next year

- Stormwater, Permit to Install, Credible Data, NPDES, Implementation of Water Quality Standards, Biosolids/Sewage Sludge, Aquatic Life Criteria.

Slide 20

ES0 Add a short point about the main changes;

Erin Sherer, 2024-07-11T20:12:32.797

ES1 I would combine with the above and just say Outreach and public comment period...

Erin Sherer, 2024-07-11T20:13:34.271

ES2 Add main point/change of rule (Updates stream uses in the watershed including for the ship channel)

Erin Sherer, 2024-07-11T20:16:11.877

To be final filed with JCARR

Beneficial Use Designations Wave 3

- OAC 3745-1-10 Grand River
- OAC 3745-1-13 Central Ohio River tributaries
- OAC 3745-1-14 Ashtabula River
- OAC 3745-1-24 Muskingum River
- OAC 3745-1-27 Black River
- OAC 3745-1-28 Vermilion River

Filed with JCARR

Water Quality Standards methods rule (OAC 3745-1-03)

ES0

- Final filed July 10, effective October 10, 2024

House Bill 175 rules

- Section 401 Water Quality Certifications (OAC 3745-32)
 - Rules 1-3 final filed July 10, effective July 20.
 - Rule 4 to be final filed July 22.
- Wetlands Water Quality Standards
 - Final filed July 10, effective Oct 10, 2024

Slide 22

ESO Short blip of what it is or main change for the listed rules.
Erin Sherer, 2024-07-11T20:17:04.357

PTI and Biosolids 5-Year Rule Review

- Sign up for updates:
 - [DSW Regulations | Ohio Environmental Protection Agency](#)
- Changes being considered for Biosolids Rule:
 - Incorporation of applicable components of NRCS 590
 - Addition of BMPs for odor control at regional storage facilities
 - Adding requirements for non-traditional beneficial use of biosolids, i.e., tree farms and land reclamation site
- Changes being considered for PTI Rule:
 - Update and clarify requirements for beneficial use of treated industrial wastewater
 - Clarify lagoon siting and construction requirements
 - Specific rule for anaerobic digesters design





Plan Review

[Sign Out](#)

Projects

Settings

Profile

Start New Project

Review Type

Select Review Type

Add Project

Divisions and Programs:

Division of Materials and Waste Management (DMWM)

- Beneficial Use
- Construction & Demolition Debris (C&DD) Landfills
- Construction & Demolition Debris (C&DD) Processing

Facilities

- Industrial Manufacturing Waste (IMW)
- Municipal Solid Waste (MSW)
- Solid Waste Management Planning (SMWD)

Division of Surface Water (DSW)

- National Pollutant Elimination Discharge System (NPDES)
- Oil and Gas Storm Water
- Surface Water Permit to Install

Division of Drinking and Ground Waters (DDAGW)

- Drinking Water
- SWAP (Source Water Assessment and Protection)

Division of Environmental and Financial Assistance (DEFA)

- Water Pollution Control Loan Fund (WPCLF)
- Water Resource Restoration Sponsor Program (WRRSP)
- Water Supply Revolving Loan Account (WSRLA)

View Within Last 6 Months

Group	Identifier	Name	Create Date	Status	Open
<None>	DSW-515	Tony Nosko	7/10/2023	Plan Submission	
<None>	DSW-507	Tony Nosko	5/25/2023	Plan Submission	
<None>	DSW-505	Tony Nosko	5/24/2023	Plan Submission	

DSW ePlans

PTI updates

ePlans:

- Applications are now submitted through the ePlans portal.
- Tips and tricks:
 - The portal will lock after 15 minutes of inactivity (soon to be 30). To check, click on the projects tab in the top right or refresh the browser.
 - Complete form A, then click “add.” this saves your progress and you can go back to add more forms.
 - If under 29 mb, please upload the plan set as one document by itself.
 - Forms completed on the portal do not need to be uploaded as PDFs.
 - Every submission should have an applicant role.
 - Applicant: The owner of the facility, business, corporation, company, etc. or the legal responsible entity.
 - Future Owner: The ultimate owner responsible for the installed system, if different than the applicant.

<https://epa.ohio.gov/divisions-and-offices/surface-water/permitting/wastewater-permit-to-install-pti-program>

Wastewater Permit-to-Install (PTI) Program

A PTI is needed when a person wishes to construct any wastewater collection, storage, or treatment system or wishes to modify any existing wastewater collection, storage, or treatment system.

A PTI is required by [Ohio Revised Code 6111.44](#) and [Ohio Revised Code 6111.45](#) and rules in [Ohio Administrative Code 3745-42](#).

Permit-To-Install Tracking

To check the status of any pending PTIs, please click the below link.

- [ePlans Permit-to-Install Tracking](#)
- [Permit-to-Install Tracking](#)

The PTI submission process will be moving to ePlans on April 15, 2024. PTI applications will continue to be submitted through liquid files until April 12, 2024. Instructions on how to submit will be included on this webpage under the “how to submit” tab prior to the launch date.

Expand All Sections

What's New? ▾

How to Obtain a PTI ▾

How to Submit a PTI ▴

To submit PTI applications through ePlans, please click on the link below and follow the instructions. [How to](#)

[Submit a PTI Using ePlans](#)

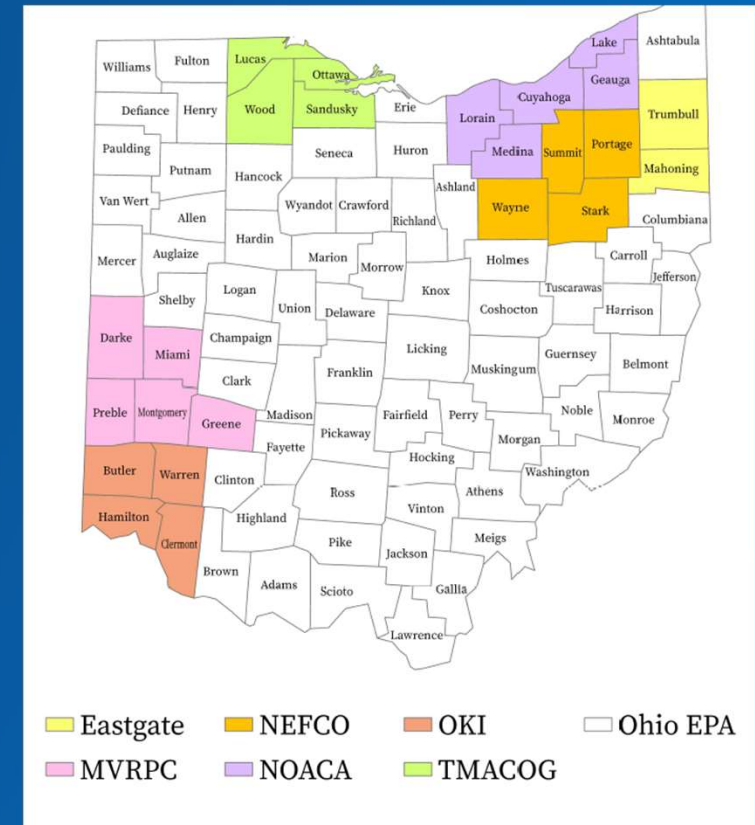
- [Division of Surface Water \(DSW\) ePlans](#)
- [PTI Signatory Form](#)



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PTI continued and 208

- Project invite is a great tool to invite the applicant, future owner, 208, health department, whoever to the project to follow.
- Reminder that if a project is within a 208 planning area, you should reach out to the Planning Agency to confirm that the project is consistent with the 208 plan **before** submitting the PTI
- **NEFCO (Portage, Stark, Summit, & Wayne):** <https://www.nefcoplanning.org/contact/>
- **NOACA (Cuyahoga, Geauga, Lake, Lorain, & Medina):** <https://www.noaca.org/about/contact-us>
- **Eastgate (Mahoning and Trumbull):** <https://eastgatecog.org/about/contact-us>
- **TMACOG (Lucas, Ottawa, Sandusky, & Wood):** <https://tmacog.org/contact>
- **MVRPC (Darke, Greene, Miami, Montgomery, & Preble):** <https://www.mvrpc.org/staff-directory>
- **OKI (Butler, Clermont, Hamilton, & Warren):** <https://www.oki.org/contact-us/>



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Priority Projects - Euclid

- Ohio's NPDES universe includes **292 majors & 2,920 minors**
- In FFY 2021, U.S. EPA identified these nine permits for “real time review”

Priority Projects - Euclid

- Ohio included a phosphorus limit of 1.0 mg/L
- Specific objection from R5 included a limit based on the facility achieving a phosphorus concentration of 0.007 mg/L



Priority Projects – Euclid

- **U.S. EPA Specific Objections to Euclid's Proposed NPDES Permit Renewal**
 - November 2, 2021
 - Hearing with R5 Administrator Shore was held June 7 & 8, 2022
 - Administrator Shore can withdraw the objection, modify it or uphold it
 - Discussions ongoing

Priority Projects – Port Clinton

- **U.S. EPA Specific Objections to Port Clinton Proposed NPDES Permit Renewal**
- Waiting on the hearing to be scheduled

What is Significant Noncompliance?

- Failure to submit a discharge monitoring report
- Failure to meet a permit compliance schedule milestone
- Violations of formal enforcement actions
- Significant permit effluent violations

What is Significant Noncompliance?

Permit effluent limit violations

- Violations Exceeding Technical Review Criteria
 - 40% exceedance for conventional pollutants (e.g. BOD, TSS, ammonia, oil and grease)
 - 20% exceedance for toxic pollutants (e.g. copper, cyanide, chlorine)
Trigger — Two or more months in a six-month period
- Chronic violations: any monthly effluent limit by any amount
Trigger — Four or more months in a six-month period

SNC = On the Regulatory Radar



Thank You



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Follow Ohio EPA on



Emerging Trends

A Look at National Issues in Water Law

Cheri A. Budzynski

Overview of Presentation

- Current Federal Water Regulations
- PFAs Monitoring
- Legal Update on Waters of the United States (AGAIN!)

Review of Current Federal Administration Rulemaking

Final and Proposed Regulations & Guidance

- FR: PFAS National Primary Drinking Water Regulation Rulemaking
- Guidance: Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs
- FR: Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances
- FR: Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category
- FR: Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Units
- FR: Revised Definition of “Waters of the United States”*

PFAS National Primary Drinking Water Regulation Rulemaking

- Final Rule – April 10, 2024
- EPA to regulate five PFAs as contaminants under SDWA
- The prior MCL was 20 ng/L for five PFAS in drinking water: PFOA, PFOS, PFHxS, PFHpA, PFNA
- Affects Drinking Water Sources

Compound	Final MCLG	Final MCL (enforceable levels)
PFOA	Zero	4.0 parts per trillion (ppt) (also expressed as ng/L)
PFOS	Zero	4.0 ppt
PFHxS	10 ppt	10 ppt
PFNA	10 ppt	10 ppt
HFPO-DA (commonly known as GenX Chemicals)	10 ppt	10 ppt
Mixtures containing two or more of PFHxS, PFNA, HFPO-DA, and PFBS	1 (unitless) Hazard Index	1 (unitless) Hazard Index

PFAS National Primary Drinking Water Regulation Rulemaking

The final rule requires:

- Public water systems must monitor for these PFAS and have three years to complete initial monitoring (by 2027), followed by ongoing compliance monitoring. Water systems must also provide the public with information on the levels of these PFAS in their drinking water beginning in 2027.
- Public water systems have five years (by 2029) to implement solutions that reduce these PFAS if monitoring shows that drinking water levels exceed these MCLs.
- Beginning in five years (2029), public water systems that have PFAS in drinking water which violates one or more of these MCLs must take action to reduce levels of these PFAS in their drinking water and must provide notification to the public of the violation.

Addressing PFAS Discharges in NPDES Permits and Through the Pretreatment Program and Monitoring Programs – Guidance to States

- **Applicability - Industry categories known or suspected to discharge PFAS:**
 - Organic chemicals, plastics & synthetic fibers
 - Metal finishing; electroplating
 - Electric and electronic components
 - Landfills
 - Pulp, paper & paperboard
 - Leather tanning & finishing
 - Plastics molding & forming
 - Textile mills
 - Paint formulating
 - Airports

Designation of Perfluorooctanoic Acid (PFOA) and Perfluorooctanesulfonic Acid (PFOS) as CERCLA Hazardous Substances

- Releases of PFOA and PFOS that meet or exceed the reportable quantity within a 24-hour period to be reported to the National Response Center, state or tribal emergency response commission, and the local or Tribal emergency planning committee for the areas affected by the release.
- Federal entities that transfer or sell their property to provide notice about the storage, release, or disposal of PFOA or PFOS on the property and a covenant (commitment in the deed) warranting that it has cleaned up any resulting contamination or will do so in the future, if necessary, as required under CERCLA 120(h).
- The U.S. Department of Transportation to list and regulate these substances as hazardous materials under the Hazardous Materials Transportation Act.
- Owners or operators of any vessel or facility to provide reasonable notice to potential injured parties by publication in local newspapers serving the affected area of any release of these substances.

Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category

Wastestream	Subcategory	Requirements
FGD Wastewater	Not Closing	Zero Discharge Systems
	EGUs Permanently Closing 2028	Surface Impoundments
	Early Adopters Closing 2034	2020 Rule Limitations as Permitted
BA Transport Water	Not Closing	Dry Handling or Close-Loop Systems
	EGUs Permanently Closing 2028	Surface Impoundments
	Early Adopters Closing 2034	2020 Rule Limitations as Permitted
CRL	Not Closing	Zero Discharge Systems
	EGUs Permanently Closing 2028	Chemical Precipitation
	Early Adopters Closing 2034	Reserved; Chemical Precipitation after Closure
Legacy Wastewater	Not Closing	Best Professional Judgment; Reserved
	EGUs Permanently Closing 2028	Best Professional Judgment
	Early Adopters Closing 2034	Best Professional Judgment
	Legacy Wastewater Discharged from Surface Commencing Closure	Chemical Precipitation

Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Units

- EPA finalized changes to the CCR regulations for inactive surface impoundments at inactive electric utilities, referred to as "legacy CCR surface impoundments."
- Legacy CCR surface impoundments are more likely to be unlined and unmonitored.
- EPA establishes groundwater monitoring, corrective action, closure, and post closure care requirements for these areas.

Waters of the United States

A Tug of War

Definition Tug of War



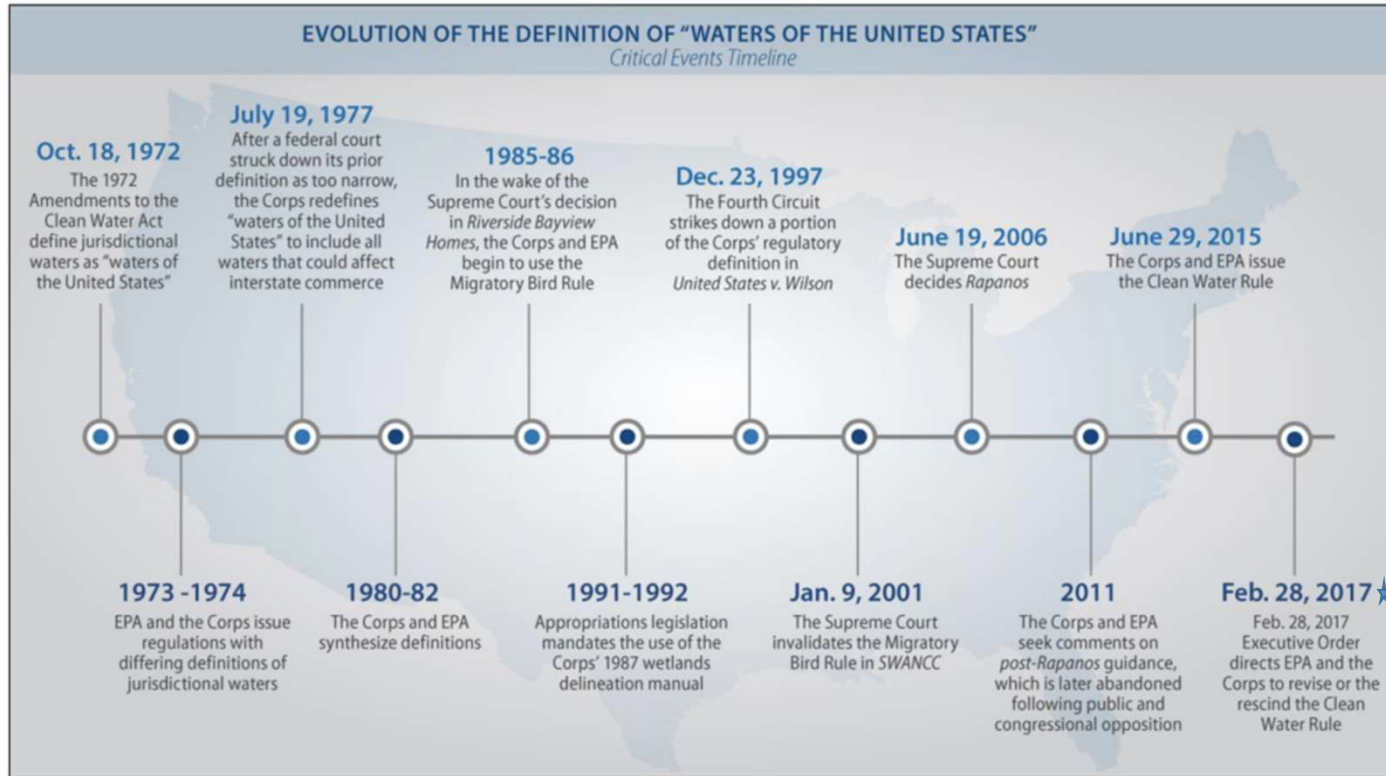
Waters of the United States

- The term “wetlands” means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated solid conditions. Wetlands generally include swamps, marshes, bogs and similar areas.
- All other waters such as intrastate lakes, rivers, streams (including intermittent streams, mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, play lakes or natural ponds, the use degradation or destruction of which could affect interstate or foreign commerce including any such waters:
 - Which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - Which are or could be used for industrial purposes by industries in interstate commerce.

Why It Matters

- This rule defines which streams and wetlands are protected by the Clean Water Act.
 - A narrow definition would leave many wetlands and streams subject to state jurisdiction, which could constrain pollution prevention efforts by the Environmental Protection Agency (EPA). A narrow definition would also limit the Army Corps of Engineers' (Army Corps) management of the permitting program for work affecting wetlands. Wetlands are natural flood control areas.
 - A broad definition would increase the area of land where land development could occur without a permit or mitigation

Figure I. Major Events in the Evolution of “Waters of the United States”



Source: Congressional Research Service, based on the sources cited in this report.

★ Since that time the Trump Administration repealed the 2015 Rule, finalized the 2019 Rule, the Biden Administration finalized the 2023 rule, AND the Supreme Court issued an opinion on the definition.

WOTUS Case and Policy History

- *United States v. Riverside Bayview Homes* (1985)
 - Rule: Wetlands adjacent to traditional navigable waters are covered by the CWA; wetland need not be navigable to be regulated; coverage of isolated wetlands
- *Migratory Bird Rule* (1986-2000)
 - Corps determined in 1986 that federal jurisdiction extended to isolated wetlands visited by migratory birds
- *Solid Waste Agency of Northern Cook County (SWANCC) v. Corps of Engineers* (2001)
 - SWANCC had sued the Army Corps for not allowing it to construct a landfill in an area with a variety of ponds and wetlands that were not connected to navigable waters.
 - For federal jurisdiction to extend to isolated, intrastate wetlands, SWANCC court demanded wetland be “adjacent to” some navigable water

WOTUS Case and Policy History

- *Rapanos v. US* (2006)
 - Issue = Whether CWA covers wetlands that do not contain, and are not adjacent to, waters that are not navigable in fact
 - Supreme Court split 4-1-4
 - Justices issued five separate opinions (with no one opinion being a majority) – 126 S. Ct. 2208 (2006)
 - Judgment vacated and case remanded

WOTUS Case and Policy History

- Plurality Opinion (Scalia)
 - “Navigable waters” means “relatively permanent bodies of water”
 - “... at a bare minimum, [wetlands require] the ordinary presence of water”
 - Scalia two-part test
 - “... relatively permanent standing or flowing body of water connected to traditional interstate navigable waters” – excludes ephemeral streams
 - “... continuous surface connection to bodies that are ‘waters of the United States’ in their own right” – making it difficult to determine where “water” ends and “wetland” begins
- Significant Nexus Opinion (Kennedy)
 - “Nexus” exists “if the wetlands ... significantly affect the chemical, physical and biological integrity of other covered waters more readily understood as ‘navigable’”

WOTUS Case and Policy History

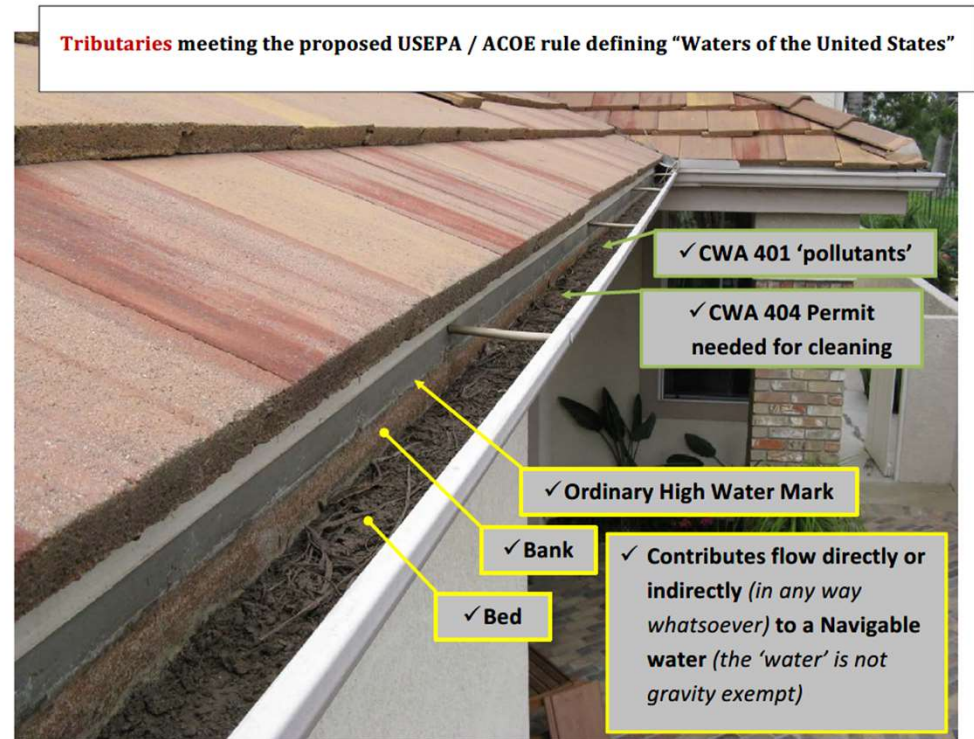
- Courts split on what interpretation applied
- Despite EPA/Corps attempts to clarify the definition and interpretation through guidance under the plurality and significant nexus opinions
 - Guidance: Non-binding and not subject to notice and comment rulemaking
- Determining jurisdiction: Time and resource intensive

2015 WOTUS Rulemaking (Obama)

- Waters of the United States: In addition to the jurisdictional categories of waters, the definition includes:
 - All impoundments of “traditional” navigable waters
 - All tributaries of “traditional” navigable waters and impoundments
 - All waters, including wetlands, adjacent to waters identified in categories one through five
 - On a case-specific basis, other waters, including wetlands, provided that those waters alone, or in combination with other similarly situated waters, including wetlands, located in the same region, have a significant nexus to a traditional navigable water

2015 WOTUS Rulemaking

- While this image tongue in cheek, the 2015 WOTUS Rulemaking expanded the definition of Waters of the United States
- June 29, 2015: The final Clean Water Rule is finalized
- Over the next two days, 27 states sue EPA in four federal courts (Houston, Columbus, Bismarck, and Savannah)
- Challengers eventually bring actions in eight federal courts of appeals and 18 federal district courts



2015 WOTUS Rulemaking

- August 27, 2015: The U.S. District Court for the District of North Dakota issues a preliminary injunction, preventing EPA and Army Corps from implementing the 2015 Clean Water Rule in the 13 states that challenged the rule in that court - *North Dakota v. EPA*, No. 3:15-cv-059 (D.N.D.)
- October 9, 2015: The Sixth Circuit issues a stay, putting a nationwide hold on the rule - *Ohio v. U.S. Army Corps of Eng'rs*, Nos. 15-3799/3822/3853/3887 (6th Cir.)

Challenges to the 2015 WOTUS Definition

- *Nat'l Ass'n of Mfrs. v. Dep't of Def.*, 138 S. Ct. 617 (2018): Supreme Court, in a unanimous opinion, held that rules defining the scope of “waters of the United States” are subject to direct review in the district courts
 - “There are two principal avenues of judicial review of an action by the EPA. Generally, parties may file challenges to final EPA actions in federal district courts, ordinarily under the Administrative Procedure Act (APA). But the Clean Water Act (or Act) enumerates seven categories of EPA actions for which review lies directly and exclusively in the federal courts of appeals.”

Challenges to the 2015 WOTUS Definition

While the cases were pending:

- June 2017: EPA and Army Corps propose to rescind the Clean Water Rule and revert to the regulations that predated it
- In addition, the Trump Administration indicated that it will issue a new rule that will be based on Justice Scalia's opinion in *Rapanos* providing jurisdiction only over “relatively permanent, standing or continuously flowing bodies of water” connected to navigable rivers, and connected wetlands

Challenges to the 2015 WOTUS Definition

- February 2018: EPA finalizes a rule that delays the effective date of the 2015 Clean Water Rule for two years, to February 6, 2020
- The same day New York files a multi-state lawsuit against EPA's delay rule - *New York v. EPA*, No. 1:18-cv-1030 (S.D.N.Y.).
- Two coalitions of environmental groups sue EPA over the delay and another coalition of environmental groups notifies EPA it will sue over the delay rule - *S. Carolina Coastal Conservation League v. Pruitt*, No. 2-18-cv-330 (D.S.C.), *NRDC v. EPA*, No. 18-cv-1048 S.D.N.Y.)
- The American Farm Bureau asks a federal District Court in Texas to issue a nationwide stay on the 2015 Clean Water Rule

Challenges to the 2015 WOTUS Definition

- February 2018: The Sixth Circuit lifts its 2015 stay of the Clean Water Rule. But EPA's delay rule is now in effect, so the Clean Water Rule does not go into effect
- June 2018: The District Court for the Southern District of Georgia grants an injunction and halts the Clean Water Rule from taking effect in Georgia, Alabama, Florida, Indiana, Kansas, North Carolina, South Carolina, Utah, West Virginia, Wisconsin and Kentucky
- The rule is now halted in 24 states because the injunction granted by the U.S. District Court for the District of North Dakota remains in effect - *Georgia v. Pruitt*, No. 2:15-cv-79 (S.D. Ga.)

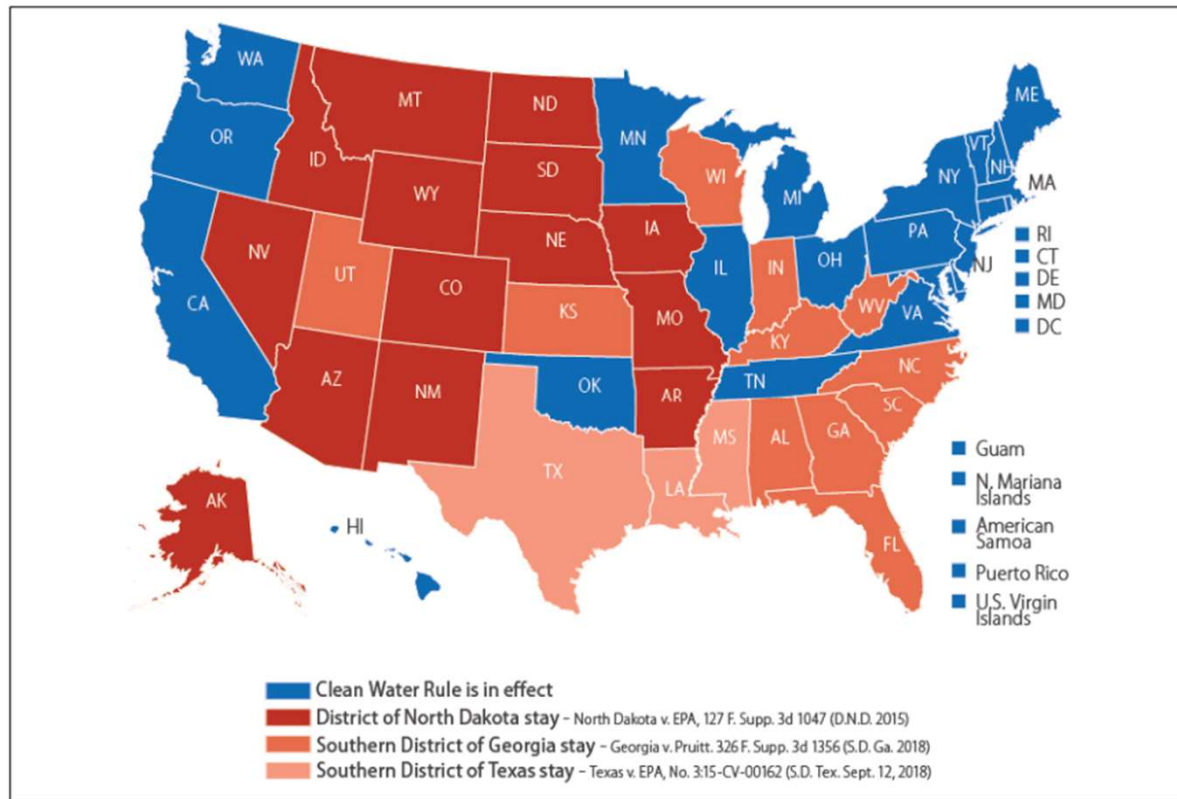
Challenges to the 2015 WOTUS Definition

- June 2018: EPA and Army Corps issue a supplemental notice of proposed rulemaking to the July 2017 proposal to repeal the 2015 Clean Water Rule
 - The supplemental notice clarifies that the agencies propose to permanently repeal the entire Clean Water Rule and put the pre-2015 regulations back in place while they finalize a new definition of “waters of the United States”
- August-September 2018: The District Court for the District of South Carolina enjoins the delay rule for failure to comply with the Administrative Procedure Act. *S. Carolina Coastal Conservation League v. Pruitt*, No. 2-18-cv-330 (D.S.C.)
- The U.S. District Court for the Southern District of Texas enjoins the implementation of the Clean Water Rule in Texas, Louisiana, and Mississippi, and the rule is now halted in 27 states. *Am. Farm Bureau Fed’n v. EPA*, No. 15-cv-165 (S.D. Tex.)

Challenges to the 2015 WOTUS Definition

- November 2018: The District Court for the Western District of Washington holds that the EPA made an error when it delayed the 2015 Clean Water Rule “without providing the public with a meaningful opportunity to comment”
- Like the August 16 decision from the U.S. District Court in South Carolina, this ruling means the Clean Water Rule is in effect in the 23 states where federal judges have not stayed it - *Puget Soundkeeper Alliance v. Wheeler*, No. C15-1342-JCC (W.D. Wash.)

Challenges to the 2015 WOTUS Rule



Evolution of the Trump WOTUS Definition

- December 2018: EPA and Army Corps release the proposed rule revising the definition of “waters of the United States.” The proposal seeks to limit the definition of “waters of the United States” as compared with the 2015 Clean Water Rule by excluding ephemeral waters that flow in response to rain and reducing the amount of protected wetlands

(intermission – leaving out a lot of further court actions)

Evolution of the Trump WOTUS Definition

- December 2019: A coalition of 14 states, New York City, and Washington, DC files a lawsuit challenging the repeal of the Clean Water Rule - *New York v. EPA*, No. 19-11673 (S.D.N.Y.)
- January 2020: EPA and Army Corps finalize the Navigable Waters Protection Rule: Definition of “Waters of the United States.” The new rule reduces the number of waterways and wetlands protected by the Clean Water Act, as compared to the 2015 Clean Water Rule and the pre-2015 regulations

The 2020 WOTUS Definition

- Notable are the excluded waters:
 - Groundwater (including groundwater that drains through subsurface drains in agricultural lands)
 - Ephemeral features that flow in response to precipitation
 - Diffuse stormwater runoff and sheet flow over uplands
 - Many roadside and farm ditches (non-navigable designation)
 - Prior converted cropland
 - Artificially irrigated areas (if irrigation ceases, the land would revert to upland characteristics)
 - Artificial lakes or ponds constructed in upland areas stormwater control, retention, infiltration, and treatment structures in upland areas
 - Water-filled depressions in upland or non-jurisdictional water areas (e.g., mining or construction activities)
 - Groundwater recharge, water reuse, and wastewater recycling structures
 - Contained waste treatment systems

Challenges to the 2020 Definition

- April-May 2020: Groups, including cattle ranchers, environmental organizations in Maryland, Massachusetts, and South Carolina, and a coalition including 17 states, New York City, and Washington, DC file separate lawsuits in federal district courts in New Mexico, Maryland, Massachusetts, South Carolina, and Northern California challenged the Navigable Waters Protection Rule - *N.M. Cattle Growers' Ass'n v. EPA*, No. No. 1:19-cv-00988 (D.N.M.); *Chesapeake Bay Found. v. Wheeler*, No. 1:20-cv-01064 (D. Md.); *Conservation Law Found. v. EPA*, No. 1:20-cv-10820 (D. Mass.); *S. Carolina Coastal Conservation League v. Wheeler*, No. 2:20-cv-01687 (D.S.C.); *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.)

Challenges to the 2020 Definition

- May 2020: The coalition of states requests a nationwide injunction or stay to halt implementation of the Navigable Waters Protection Rule until the litigation is resolved - *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.)
- May-June 2020: A coalition of industry groups including the American Farm Bureau Federation, American Petroleum Institute, U.S. Chamber of Commerce, and National Mining Association request to intervene in the South Carolina case and a similar coalition intervenes in the California case to support the Trump administration in both cases - *S. Carolina Coastal Conservation League v. Wheeler*, No. 2:20-cv-01687 (D.S.C.); *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.)

Challenges to the 2020 Definition

- June 2020: A coalition of 23 states requests to intervene in the case led by California to support the Trump administration. *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.)
- June 2020: The Northern District of California denies a request for a nationwide injunction of the Navigable Waters Protection Rule. *California v. Wheeler*, No. 3:20-cv-03005 (N.D. Cal.); the same day, a federal judge in Colorado grants a stay, halting implementation of the rule within the state - *Colorado v. EPA*, No. 1:20-cv-01461 (D. Colo.)

Challenges to the 2020 Definition

- June 2020: The Navigable Waters Protection Rule takes effect in every state except Colorado. That same day, a number of groups file lawsuits in federal district courts challenging the rule, including the Navajo Nation in the District of New Mexico, the Puget Soundkeeper Alliance, Idaho Conservation League, Sierra Club, and Mi Familia Vota in the Western District of Washington, and a coalition of Indigenous tribes in the District of Arizona - *Navajo Nation v. Wheeler*, No. 2:20-cv-00602 (D.N.M.); *Puget Soundkeeper Alliance v. EPA*, No. 2:20-cv-00950 (W.D. Wash.); *Pascua Yaqui Tribe v. EPA*, No. 4:20-cv-00266 (D. Ariz.)

(intermission – leaving out a lot of further court actions)

Challenges to the 2020 WOTUS Definition

- August 2021: Petition for Review to vacate the Trump Era definition of WOTUS. An Arizona federal judge vacated the rule - *Pasqua Yagui Tribe v. EPA*
- September 2021: In light of the Arizona decision, EPA indicates it will “halt” its process to reinstate the pre-2015 regulatory definition of “waters of the United States” and will interpret the term “consistent with the pre-2015 regulatory regime until further notice.”
- September 2021: U.S. District Court for the District of New Mexico issued an order vacating and remanding the NWPR - *Navajo Nation v. Regan*, No. 2:20-cv-00602 (D.N.M. Sept. 27, 2021)
 - Six courts also remanded the NWPR without vacatur or without addressing vacatur

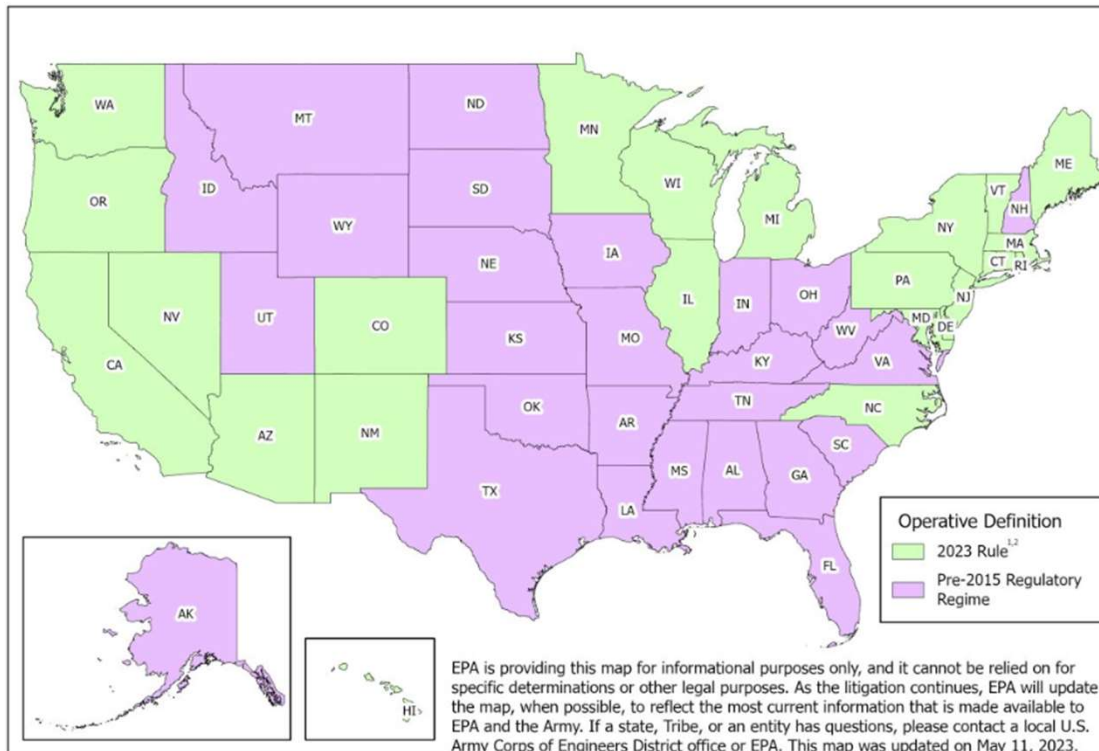
Biden Proposes a New Definition

- January 2021: The Army Corps of Engineers and EPA will review the Navigable Waters Protection rule to ensure it is consistent with the priorities outlined in President Biden's Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. Under the same order, President Biden revokes Trump's Executive Order 13778 requiring review and reversal of the Obama-era "Waters of the United States" rule
- November 2021: EPA and Department of the Army, Corps of Engineers release a proposed rule to define the scope of waters protected under the CWA, rescinding the Trump Administration's Navigable Waters Protection Rule. The rule would reinstate the pre-2015 definitions of "waters of the United States" updated to reflect the Supreme Court case law.
- December 2022: PA and the Army Corps release their final rule revising the definition of WOTUS. The rule builds upon the currently effective, pre-2015 definition of WOTUS, but makes updates to reflect case law, the Clean Water Act, and scientific and technical recommendations.

Challenges to the 2023 WOTUS Rule

- April 2023: The Biden Administration definition is stayed in 24 states including Ohio - *West Virginia, et al. v. EPA*, No. 3:23-cv-32 (D.N.D.)
- July 2023: The Biden Administration definition is stayed in Idaho and Texas - *Texas v. EPA*, No. 3:23-cv-17 (S.D. Tx.)
- May 2023: Court dismissed the case on lack of standing; the Sixth Circuit remanded case back to the District and stayed the Biden Administration definition in Kentucky - *Kentucky v. EPA*, No. 3:23-cv-7 (E.D. Ky.)

Challenges to the 2023 WOTUS Definition



¹Also operative in the U.S. territories and the District of Columbia

²The pre-2015 regulatory regime is operative for the Commonwealth of Kentucky and Plaintiff-Appellants in *Kentucky Chamber of Commerce, et al. v. EPA* (No. 23-5345) and their members (Kentucky Chamber of Commerce, U.S. Chamber of Commerce, Associated General Contractors of Kentucky, Home Builders Association of Kentucky, Portland Cement Association, and Georgia Chamber of Commerce).

The Supreme Court Weighs In (AGAIN)

- *Sackett v. EPA (2023)*:

- U.S. Supreme Court granted cert. in January 2022 to hear the petition on the question of “Should Rapanos be revisited to adopt the plurality’s test for wetlands jurisdiction under the Clean Water Act.”
- Petitioner’s brief submitted on April 11, 2022, and Respondent’s brief submitted on June 10, 2022
- Oral arguments held on October 3, 2022
- Opinion issued May 25, 2023, with a 5-4 decision. Technically all nine judges agreed that the Sackett’s property was not WOTUS but ...

The Supreme Court Weighs In (AGAIN)

- Court Opinion (Alito): The CWA extends to “Wetlands with a continuous surface connection to bodies that are waters of the United States in their own right, so that they are indistinguishable from those waters.” (internal quotations omitted)
- Thomas/Gorsuch: Would have limited the definition to traditional navigable waters and allow the states to regulate all other waters
- Kagen/Sotomayor/Jackson/Kavanaugh: Would have had a more expansive definition than the majority opinion
- U.S. EPA must propose rules consistent with the majority opinion

The Current Definition

- August 2023: EPA and the Army Corps of Engineers release the final conforming rule amendments to the “Revised Definition of ‘Waters of the United States’” in response to the Supreme Court’s *Sackett* decision limiting protection under the Clean Water Act.
- The agencies explain that they are removing the significant nexus standard and amending the rule’s definition of “adjacent” since these provisions were invalidated by the Supreme Court’s interpretation of the Clean Water Act in *Sackett*.
- The rule also clarifies that interstate wetlands are no longer protected and narrows the types of water features covered by the “additional waters” category. The agencies release the rule as final, not subject to public comment, under the good cause exception to notice and comment under the Administrative Procedure Act.
 - Leaves regulation to states on excluded waters

The Current Definition

Changes that the agencies have made to the January 2023 Rule categories:

Jurisdictional Category	Key Changes to the January 2023 Rule Regulation Text	Regulatory Text Paragraph
Traditional Navigable Waters	No changes	(a)(1)
Territorial Seas	No changes	(a)(1)
Interstate Waters	Removing interstate wetlands from the text of the interstate waters provision	(a)(1)
Impoundments	No changes	(a)(2)
Tributaries	Removing the significant nexus standard	(a)(3)
Adjacent Wetlands	Removing the significant nexus standard	(a)(4)
Additional Waters	Removing the significant nexus standard; removing wetlands and streams from the text of the provision	(a)(5)

The Current Definition

Changes that the agencies have made to the January 2023 Rule definitions:

Definition	Key Changes to the January 2023 Rule Regulation Text	Regulatory Text Paragraph
Wetlands	No changes	(c)(1)
Adjacent	Revised definition to mean “having a continuous surface connection.”	(c)(2)
High tide line	No changes	(c)(3)
Ordinary high water mark	No changes	(c)(4)
Tidal waters	No changes	(c)(5)
Significantly affect	Deleted definition	(c)(6)

The Challenge Continues

- November 2023: Republican-led states and industry groups are urging federal courts to vacate the Biden administration's rule aligning its definition of WOTUS with the Supreme Court's *Sackett* ruling, raising concerns over the rule's procedure, its alleged failure to adhere to the scope of the ruling and the Clean Water Act (CWA), as well as constitutional concerns.
- The Waters Advocacy Coalition (WAC), a broad coalition representing a range of industrial and municipal dischargers, sent a March 12, 2024 FOIA request to the Corps requesting records concerning the implementation of the agencies' conforming WOTUS rule, specifically asking for any guidance statements of policy and interpretation which have been adopted by the agency and are not publicly distributed and transmitted from Corps' headquarters to individual district offices between Sept. 1, 2023, and Oct. 31, 2023.

The Challenge Continues

- White v. U.S. EPA (filed March 15, 2024 in the Eastern District of N.C.)
 - White owns several properties in North Carolina.
 - White has claimed that he has had to:
 - Pause development of a sand mine on his property, for which he has a state permit;
 - Refrain from exploring the possibility of constructing a fish-farming operation for reclamation purposes following retirement of the sand mine; and
 - Halt further improvements on land he uses for a local crop-sharing arrangement, including erosion control measures.
 - Argument: EPA's new navigable waters rule completely fails to comply with the Supreme Court's ruling in *Sackett v. EPA*. Regulators cannot ignore the Supreme Court when it rules against them.
 - Could impact enforcement of the rule in 27 states.

Considerations for Project Development

- The new definition of Waters of the United States simplifies what water bodies are under the jurisdiction of the Army Corps of Engineers
- Some isolated wetlands are also regulated by Ohio EPA
- Any project development on properties may require permitting from either the Army Corps of Engineers or Ohio EPA
- Failure to obtain a permit and subsequent enforcement can be costly
- Raising this issue with a client is important in a client's consideration of purchasing a particular property
 - We frequently work with our real estate attorneys and advise on this issue

Jurisdictional Determination

- A jurisdictional determination (JD) indicating whether waters of the United States are present — and their approximate locations/boundaries — can be obtained from the Corps.
- A nonbinding preliminary JD will indicate whether waters of the U.S. are present on the parcel and may indicate the approximate locations of any such waters.
- An approved JD is an official Corps determination that jurisdictional waters are either present or absent in the specified review area and these JDs are valid for a five (5) year period.

Jurisdictional Determination

- On March 22, the U.S. Army Corps of Engineers (Corps) released a memo outlining how the Corps will protect non-jurisdictional waters using civil works and regulatory authorities following the *Sackett* decision, which significantly limited the scope of waters considered to be waters of the United States (WOTUS) under the Clean Water Act (CWA).
- The memo directs the Corps to use various civil works and regulatory program action to protect waters and wetlands no longer covered under WOTUS.

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Water Regulations - Current Priorities and Future Forecasting

33rd Annual Conference on Air, RCRA & Water Permits
Environmental Permitting in Ohio

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Environmental Specialist II at OVEC/IKEC, overseeing water permitting and compliance activities. Previous experience includes: working at Ohio EPA CDO DAPC as an Environmental Specialist II, interning in the Environmental Remediation Department at the Portsmouth Gaseous Diffusion Plant, and working as an environmental engineering Co-Op at Glatfelter Paper Company (Pixelle Specialty Solutions) in Chillicothe, Ohio.

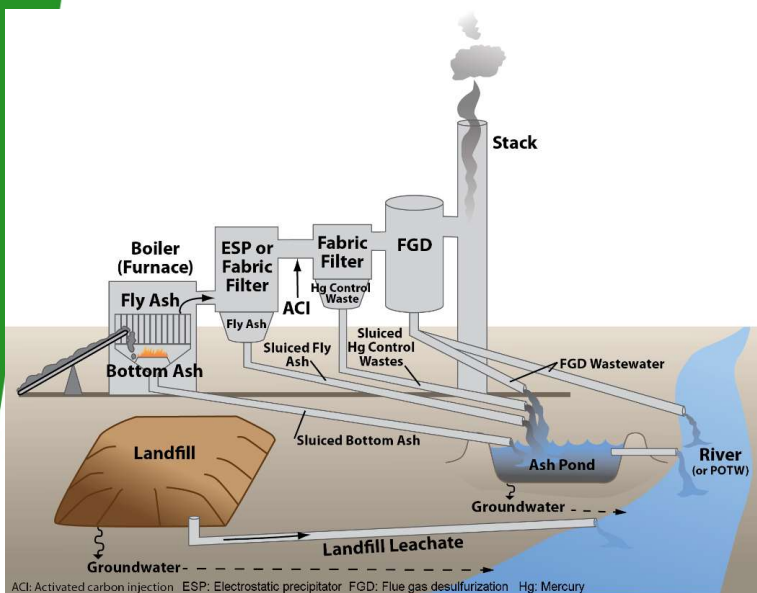


Ohio Valley Electric Corporation (OVEC)/ Indiana-Kentucky Electric Corporation (IKEC)

- ▶ Created on October 1, 1952, through a power agreement with the DOE, with the purpose of providing the large electric power requirements for the uranium enrichment facility (Portsmouth Gaseous Diffusion Plant) in Piketon, Ohio.
- ▶ Two coal fired power plants (1955):
 - ▶ Kyger Creek Station - Cheshire, Ohio (1,085 MW)
 - ▶ Clifty Creek Station - Madison, Indiana (1,302 MW)
 - ▶ A network of 705 circuit miles of transmission lines.
- ▶ OVEC/IKEC is currently supplying power to its Company Shareholders through an Inter-Company Power Agreement.



Effluent Limitations Guidelines

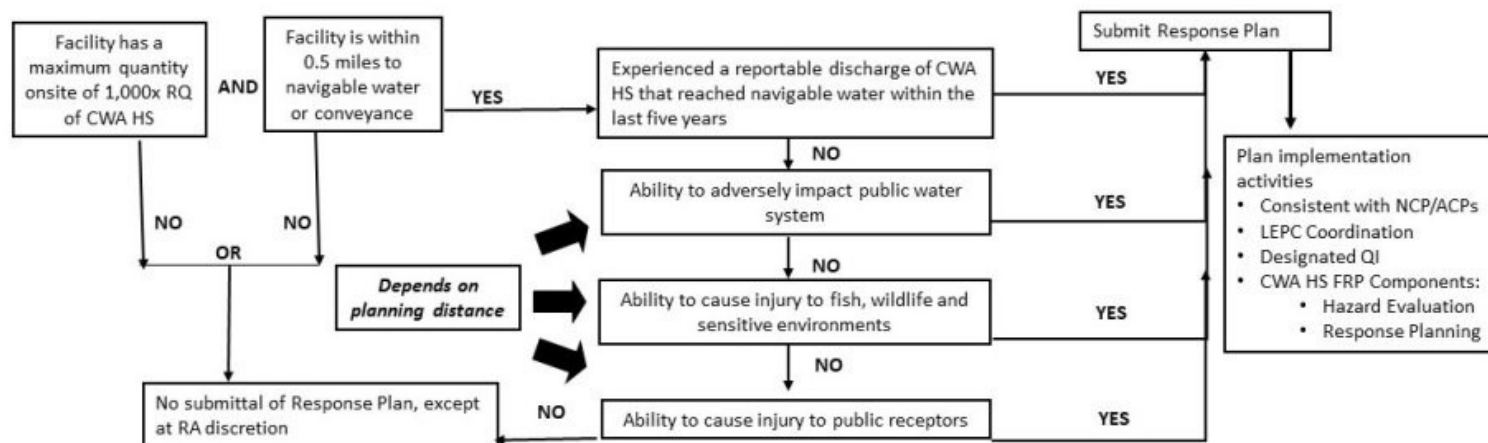


EPA, 2024

- ▶ The EPA finalized a Clean Water Act regulation to revise the technology-based effluent limitations guidelines and standards (ELGs) for the steam electric power generating point source category.
 - ▶ Effective date of **July 8th, 2024**
 - ▶ Zero Liquid Discharge for Flue gas desulfurization (FGD) wastewater, combustion residual leachate (CRL), and bottom ash (BA) transport water.
 - ▶ Numeric discharge limitations for mercury and arsenic in unmanaged CRL.
 - ▶ Best Professional Judgment (BPJ) limits set by the local permitting authority for legacy wastewater discharged from ongoing surface impoundment closures.
 - ▶ A new subcategory for EGUs permanently ceasing coal combustion by December 31st, 2034.
 - ▶ Compliance date is as soon as possible, but no later than **December 31st, 2029**.

Clean Water Act Hazardous Substances Facility Response Plan

- ▶ Facility Response Plans (FRPs) are required to be prepared and submitted to EPA if a facility could reasonably be expected to cause “substantial harm” to the environment by discharging Clean Water Act (CWA) hazardous substances into navigable waters or a conveyance to navigable waters.
 - ▶ Effective date of **May 28th, 2024**
 - ▶ Regulated facilities are required to submit response plans to EPA within **36 months** (3 years) after the effective date of the rule, **June 1st, 2027**.



Revised Lead and Copper Rule

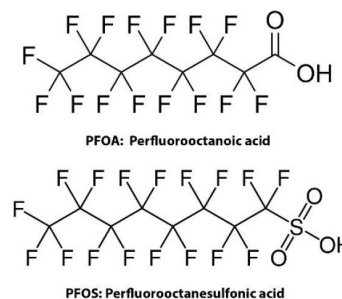
- ▶ Applicable to community water systems and non-transient, non-community water systems (a public water system that is not a community water system and that regularly serves at least 25 of the same persons over 6 months per year).
 - ▶ Effective date of **October 16th, 2024**
 - ▶ Requirements include: an initial service line inventory, notification to persons served of known or potential lead service line, sampling, and associated reporting requirements.
 - ▶ Lead Action Level of 15 ppb
 - ▶ If the Action Level is exceeded under required sampling requirements, the lines may need to be replaced.



Cleveland Water

PFAS (Per- and polyfluoroalkyl substances)

- ▶ There are thousands of PFAS chemicals that have been used in a variety of different products since the 1940s.
- ▶ The issue: PFAS substances are very hard to break down, they can last in the environment for extended periods of time (forever chemicals). Research shows they can be harmful to human health in certain quantities.
- ▶ In 2021 EPA Released a PFAS strategic Road Map.
- ▶ 2022 Memorandum – Recommended the addition of PFAS to NPDES permits
- ▶ In 2024:
 - ▶ EPA designated – PFOA and PFOS – as hazardous substances under the Comprehensive Environmental Response, Compensation and Liability Act, (Superfund).
 - ▶ EPA issued the first-ever drinking water standard for PFAS. PFOA & PFOS - 4 ppt.
 - ▶ EPA released updated guidance on the destruction and disposal of PFAS - containing materials.
 - ▶ EPA released three test methods:
 - ▶ Method 1633, Method 1621 & OTM-50
 - ▶ EPA announced the addition of seven new PFAS to the list of chemicals covered by the Toxics Release Inventory (TRI).
 - ▶ EPA Proposed a rule to add 9 PFAS to the RCRA hazardous constituents list.
- ▶ Ohio PFAS Action Plan



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Additional Priorities

- ▶ CWA 316(b) Cooling Water Intake Structure Requirements
- ▶ Legacy Coal Combustion Residuals Rule - November 8th, 2024

Keeping an eye on...

- ▶ Waters of the United States (Sackett V. EPA)
- ▶ County of Maui Decision and functional equivalent discharges
- ▶ Nationwide Permits - U.S. Army Corps of Engineers (2026)
- ▶ Environmental Justice concerns
- ▶ Protected and Endangered Species



Thank you

Are there any questions at this time?

