Proposed EPA Rulemakings: Safe Drinking Water Act and Clean Water Act
December 2021

Safe Drinking Water Act Rulemakings

[HYPERLINK "https://www.epa.gov/ground-water-and-drinking-water/revised-lead-and-copper-rule"]: June 10, EPA signed a final rule to extend the effective date of the Lead and Copper Rule (LCR) Revisions to December 16, 2021. EPA is also delaying the January 16, 2024 compliance date established in the LCRR to October 16, 2024. This past year, EPA hosted several roundtables and virtual events to obtain further public input. This rule includes actions to reduce exposure in drinking water where it is needed most and retains the current Maximum Contaminant Level Goal (MCLG) of zero and an Action Level (AL) of 15 ppb.

[HYPERLINK "https://www.epa.gov/pfas" \h]: On February 22, 2021, EPA ratified its January 19, 2021 determination to regulate PFOA and PFOS in Drinking Water as part of EPA's final regulatory determination for eight contaminants listed on the fourth Contaminant Candidate List. The Agency proposed to regulate PFOA and PFOS and to not regulate six contaminants: 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX. On February 26, 2020 EPA released the [HYPERLINK "https://www.epa.gov/sites/production/files/2020-01/documents/pfas_action_plan_feb2020.pdf" \h]. In January 2021, EPA released a fact sheet on the [HYPERLINK "https://www.epa.gov/sites/default/files/2021-01/documents/pfas_factsheet_jan2021-v5.pdf" \h] that has been made under EPA's PFAS Action Plan. In October 2021, EPA released a [HYPERLINK "https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/18/fact-sheet-biden-harris-administration-launches-plan-to-combat-pfas-pollution/"] which centers on three guiding strategies: Increase investments in research, leverage authorities to take action now to restrict PFAS chemicals from being released into the environment, and accelerate the cleanup of PFAS contamination.
Key dates: A proposed MCL is expected in January 2023 (24 months after positive determination), and the final MCL in July 2024 (18 months after proposed MCL).

[HYPERLINK "https://www.epa.gov/sdwa/perchlorate-drinking-water"]: On June 18, 2020, EPA withdrew its 2011 regulatory determination and made a final determination to not issue a national regulation for perchlorate in drinking water. EPA determined that perchlorate does not meet the criteria for regulation as a drinking water contaminant under the SDWA on the basis that perchlorate is not found in drinking water with a frequency and at levels of public health concern to support a meaningful opportunity for health risk reduction through a national regulation.
Key dates: Under E.O. 13990, EPA is conducting a regulatory review of its June 2020 action and has not established a timeframe by which it will conclude its review.

[HYPERLINK "https://www.epa.gov/dwucmr"] EPA uses the Unregulated Contaminant Monitoring Rule (UCMR) to collect data for contaminants that are suspected to be present in drinking water and do not have established health-based standards under SDWA. UMCR 5 will likely include a list of 29 PFAS compounds and the inorganic metal Lithium. Prior UCMR monitoring only applied to systems serving >10K persons. Small size systems, those serving >3300 persons, will now be subject to the monitoring requirements. The next monitoring cycle is scheduled for 2023-2025 and will include additional PFAS compounds. See [HYPERLINK "https://www.epa.gov/sites/default/files/2021-01/documents/ucmr5-proposal-factsheet-draft.pdf"].
Key dates: Final rule expected before December 2021. No regulatory action by primacy agencies.

[HYPERLINK "https://www.epa.gov/ccr/ccr-information-consumers"]: SDWA requires community water systems to provide customers with an annual Consumer Confidence Report on their drinking water

quality and compliance with SDWA requirements. The America's Water Infrastructure Act of 2018 (AWIA) revised the content, form, manner and frequency of the report. Report contents are to also include lead action level exceedances that require corrective action and increased the frequency from annually to biannually that large water systems serving >10K persons will need to produce and distribute electronically.
Key dates: In January 2021, NRDC filed a lawsuit against EPA for failure to meet the rulemaking deadline of within two years of AWIA enactment or by October 23, 2020. Negotiations under the Consent Decree will inform the CCR rule revision schedule.

[HYPERLINK "https://www.epa.gov/dwsixyearreview"]: SDWA requires EPA, every six years, to review and revise, if necessary, each regulation and requires that any revision maintain or provide greater health protection. Since 1996, EPA has completed three cycles of the "Six-Year Review." In December 2016, EPA announced completion of its third Six Year Review and identified 8 candidates for regulatory revision that included five (5) microbials (*Giardia lamblia*, heterotrophic bacteria, *Legionella*, viruses, and *Cryptosporidium)* and three (3) disinfection byproduct contaminant and groups- Chlorite, Haloacetic Acids (HAA5), and Total Trihalomethanes (TTHMs). These eight contaminants are covered under five existing microbial/disinfection byproduct (M/DBP) rules. See [HYPERLINK "https://www.epa.gov/dwsixyearreview/potential-revisions-microbial-and-disinfection-byproducts-rules"]. Public meetings have been held to obtain stakeholder input on proposed revisions to the M/DBP rules. In January 2019, Waterkeeper Groups sued EPA for failure to enact regulations for determinations under the Six Year Review that regulatory changes are needed.
Key dates: Proposed rule to amend or decision not to propose amended rules: NLT July 31, 2024. Final rule or withdrawal of proposed action by September 30, 2027.

[HYPERLINK "ttps://www.epa.gov/sites/default/files/2019-07/documents/awia-_restructuring_rule_factsheet.pdf"]: The America's Water Infrastructure Act of 2018 (AWIA) requires EPA to issue a regulation which authorizes primacy agencies to mandate restructuring assessments of public water systems challenged with meeting drinking water health-based standards and are unable to comply. The regulation must also address liability protection for PWSs which subsumes a noncomplying water system under a consolidation remedy. AWIA required EPA to promulgate a regulation within two years of enactment of AWIA or by October 23, 2020.
Key dates: Proposed rule: June 2022, Final rule: March 2024.

Clean Water Act Rulemakings

[HYPERLINK "https://www.epa.gov/wotus"] On June 9, 2021, the U.S. Environmental Protection Agency and the Department of the Army announced their intent to revise the definition of "waters of the United States." This process includes two rulemakings: the first rule will propose to restore the regulations defining "waters of the United States" in place for decades until 2015, updated to be consistent with relevant Supreme Court decisions. The agencies will also pursue a second rulemaking process that further refines and builds upon that regulatory foundation. On August 30, 2021, the Arizona District Court vacated and remanded the current WOTUS definition (Navigable Waters Protection Rule). EPA and the Army are [HYPERLINK "https://www.epa.gov/wotus/current-implementation-waters-united-states"] the pre-2015 regulations as updated by Supreme Court decisions.
Key dates: On November 18, 2021, the Agencies signed a [HYPERLINK "https://www.epa.gov/wotus/revising-definition-waters-united-states"] to put back into place the pre-2015 definition of "waters of the United States," updated to reflect consideration of Supreme Court decisions. The agencies will take public comment on the proposed rule for 60 days from when it is published in the Federal Register (which is pending).

EPA and Army announced a process for stakeholders to submit nomination letters with a slate of participants to discuss the regional implications of "waters of the United States" (WOTUS). The [HYPERLINK "https://www.epa.gov/system/files/documents/2021-10/pre-publication-frn-notification-of-regional-roundtable-discussions.pdf"] will engage stakeholders representing diverse perspectives in meaningful dialogue to help inform the agencies' work to develop an enduring definition of WOTUS that supports public health, environmental protection, agricultural activity, and economic growth. Nominations were due by December 1, 2021.

[HYPERLINK "https://www.epa.gov/cwa-401"]: In accordance with Executive Order 13990, the U.S. Environmental Protection Agency (EPA) has announced its intention to reconsider and revise the 2020 Clean Water Act Section 401 Certification Rule ("401 Certification Rule") found at 40 CFR Part 121. Information on outreach and engagement opportunities can be found [HYPERLINK "https://www.epa.gov/cwa-401/upcoming-outreach-and-engagement-cwa-section-401-certification"]. To assist with implementation of the current rule, on August 20, 2021, EPA and USACE issued a [HYPERLINK "https://www.epa.gov/system/files/documents/2021-08/8-19-21-joint-epa-army-memo-on-cwa-401-implementation_508.pdf"] regarding implementation of the 2020 Clean Water Act (CWA) Section 401 Certification Rule associated with U.S. Army Corps of Engineers (Corps) permits. On October 21, 2021, the District Court for the Northern District of California vacated and remanded the 2020 401 Rule. As a result, the 1971 401 Regulations are being implemented nationwide. More information can be found [HYPERLINK "https://www.epa.gov/cwa-401/2020-clean-water-act-section-401-certification-rule-0"].

[HYPERLINK "https://www.epa.gov/wqs-tech/promulgation-tribal-baseline-water-quality-standards-under-clean-water-act"]: EPA is developing a proposed rule to establish tribal baseline water quality standards (WQS) for waters on Indian reservations that do not have WQS in effect for Clean Water Act (CWA) purposes. This rulemaking recognizes the importance of tribal waters and the need to better protect the water resources on which tribes rely. Over 80% of Indian reservations currently do not have WQS in effect for CWA purposes. Establishing baseline WQS would ensure human health and environmental protection for these waters and would help support tribes' interests in protecting their water quality and uses of reservation waters.
Key dates: EPA anticipates proposing this rule in Spring 2022 and will provide an opportunity for public comment on the proposed rule. EPA will also hold a second tribal consultation and coordination period with tribal governments before EPA moves toward a final rulemaking.

[HYPERLINK "https://www.epa.gov/wqs-tech/revising-federal-water-quality-standards-regulations-protect-tribal-reserved-rights"]: EPA is considering changes to the water quality standards (WQS) regulations at 40 CFR Part 131 to explicitly and sustainably protect tribal reserved rights (e.g., treaty rights) in state waters, consistent with existing legal obligations. Many tribes hold reserved rights to resources through treaties and equivalent agreements with the U.S. government on lands and waters where states have jurisdiction to establish WQS. The regulation changes that EPA is considering are intended to help states and EPA protect aquatic and aquatic-dependent resources reserved to tribes in treaties and equivalent agreements when establishing, revising, and reviewing WQS.
Key dates: EPA anticipates proposing this rule in Spring 2022. Tribal governments will have an opportunity to provide comments on the proposed rule and we will hold a second tribal consultation and coordination period before we move toward a final rulemaking

[HYPERLINK "https://www.epa.gov/eg/2021-supplemental-steam-electric-rulemaking"] EPA has initiated a supplemental rulemaking to strengthen certain discharge limits in the Steam Electric Power Generating category (40 CFR Part 423). EPA undertook a science-based review of the 2020 Steam Electric Reconsideration Rule under Executive Order 13990, finding that opportunities for improvement exist. EPA intends to issue a proposed rule for public comment in the fall of 2022.