

PENDING EPA REGULATIONS OF INTEREST TO COUNTIES

NAME	STATUS OF RULE	RIN #	BACKGROUND	LOCAL GOVERNMENT IMPACT
Withdrawal of 2015 “Waters of the U.S.” (WOTUS) Rule and Re-codifying of Preexisting Rules	Final rule: Aug. 2019	RIN: 2040-AF74	<p>In 2015, the Obama Administration finalized a new definition for WOTUS that was immediately challenged in the courts. The rule would have expanded the definition of “WOTUS,” impacting county-owned and maintained infrastructure. This proposed rule would withdraw the 2015 WOTUS rule and reinstitute the 1986 WOTUS regulations that were in place prior to the 2015 rule.</p>	<p>Under the 2015 rule, more county-owned and maintained infrastructure such as roads and roadside ditches, bridges and stormwater, floodwater and drainage ditches would have triggered federal WOTUS determinations. NACo’s policy states that “streets, gutters and human-made ditches” should be excluded from WOTUS.</p> <p>To read NACo’s comments on the 2015 rule, click here. To read NACo’s 2018 comments on the withdrawal and recodification proposal, click here.</p>
Rewrite the “Waters of the U.S.” (WOTUS) Definition	Final Rule: Dec. 2019	RIN: 2040-AF75	<p>WOTUS is a term used in the Clean Water Act (CWA) to differentiate between waters that are federally protected vs. state protected.</p> <p>The Trump Administration is currently conducting a substantive re-evaluation and revision of the current WOTUS definition. The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Army Corps) accepted comments on a proposed rule earlier this spring and will finalize a new WOTUS definition in late 2019.</p>	<p>In response to the proposed definition, in April 2019, NACo submitted two sets of comment letters. The first letter, with the National League of Cities and the U.S. Conference of Mayors, highlighted the opportunities and challenges that counties, cities and mayors potentially face. The second letter is county exclusive and went into more details on how the rule could potentially impact county-owned infrastructure and offered recommendations.</p>
Extending Applicability Date to 2015 WOTUS Rule	Final rule: n/a	RIN: 2040-AF80	<p>In February 2018, the EPA and Army Corps extended the implementation date of the 2015 WOTUS rule for two years to 2020 to allow the agencies time to work through a WOTUS rewrite. However, after the U.S. District Courts for the District of South Carolina and the Southern District of Washington struck down the rule, in February 2019, the agencies announced they withdrew from the case to “focus on the rulemaking efforts underway.”</p>	<p>Because this rule has been struck down by the courts, this has created a patchwork of different WOTUS regulations nationwide. In 27 states, the 1986 WOTUS regulations are the law of the land and in 23 states, the 2015 WOTUS rule is in effect.</p>

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<p>Peak Flows Management (at wastewater treatment facilities)</p>	<p>NPRM: Nov. 2019 Final Rule: July 2020</p>	<p>RIN: 2040-AF81</p>	<p>During rain events, stormwater runoff is meant to enter sewer systems for treatment. However, treatment facilities can get overwhelmed during heavy rain events. In these cases, the facilities are designed to divert “overflow” to a second facility for treatment before “blending” with the treated water from the primary plant. This process can be controversial, since the secondary treatment process is not as stringent as the primary. In 2012, EPA attempted to ban blending through guidance documents, rather than going through a public comment period, at an estimated cost of \$150 billion nationwide to implement. In 2013, the ban was struck down in the 8th circuit court, which ruled the ban went beyond EPA’s statutory authority.</p> <p>After the 2013 ruling in the 8th Circuit Court, EPA stated that the decision was only binding within the jurisdiction of the court(which includes parts of Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota and South Dakota). Outside of the Eighth Circuit, EPA has attempted to ban blending on a case-by-case basis. The current Administration has announced plans to revisit this determination and has undertaken a series of listening sessions around the nation.</p>	<p>The lack of a uniformly applied standard for blending has caused tremendous delay and confusion for local governments and has greatly increased local costs. By EPA’s own estimates, a blending ban would cost communities and the residents they serve over \$150 billion nationwide to implement. This cost would be born by local governments that own and manage Publicly Owned Treatment Works (POTWs), which may or may not be able to pass on additional costs to their residents and businesses.</p> <p>In October 2018, NACo, along with the National League of Cities and U.S. Conference of Mayors, sent a letter in response to EPA’s information request. To view the letter, click here.</p>
<p>Clean Water Act Section 404 Assumption Update Regulation</p>	<p>NPRM: March 2020 Final Rule: March 2021</p>	<p>RIN: 2040-AF83</p>	<p>The CWA gives states and tribes the option of assuming oversight of the CWA’s Section 404 permit program in certain waters within the state’s or tribe’s jurisdiction. Currently, only two states – Michigan and New Jersey – have requested and successfully received approval to run the Section 404 program in their state. The administration has identified clarifying this process as a priority. A proposed rule is expected to be released early next year with the intent to provide clarity on which waters are assumable by a state.</p>	<p>While NACo does not have specific policy on CWA Section 404 assumption, in the Public Lands section of the American County Platform, it states that counties believe in “state primacy in water resources administration, management and allocation.”</p>

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<p>Clarification of State Certification Procedures Under Section 401 of the Clean Water Act</p>	<p>Status: NPRM: Aug. 2019 Final Rule: May 2020</p>	<p>RIN: 2040-AF86</p>	<p>In June 2019, EPA released new guidance on the CWA Section 401 water certification permit program for approval of energy projects. The new guidance revises the timeline for states to review, approve or deny proposed energy projects. States are now limited to one year from the time of submittal to approve or deny an application. Additionally, the guidance limits the scope of water quality issues that states can address in a Section 401 certification, preventing states from using Section 401 to address an energy project’s impact on an aquatic habitat, inadequate river flows and impacts on fish and other wildlife. While the guidance is effective immediately, it is likely that legal challenges will be filed. Additionally, the EPA is expected to undergo a more formalized rulemaking since guidance can be easily overturned at any time, or from one administration to the next.</p>	<p>Since state and local governments play a strong role as co-regulators in CWA implementation, counties are interested in how these regulatory updates will impact the role of non-federal actors in the CWA permitting process.</p> <p>In May 2019, NACo, along with other local government groups, sent a letter to EPA Administrator Andrew Wheeler requesting a delay on a proposed rule on Section 401 until after the EPA could more fully engage with state and local governments. To view the letter, click here.</p>
<p>Compensatory Mitigation for Losses of Aquatic Resources – Review and Approval of Mitigation Banks and In-Lieu Fee Programs</p>	<p>NPRM: Dec. 2019 Final Rule: Sept. 2020</p>	<p>RIN: 2040-AF90</p>	<p>In June 2019, the EPA and the Army Corps announced new efforts to review and revise regulations on the Mitigation Rule. Promulgated jointly by the EPA and the Army Corps in 2008, the Mitigation Rule establishes standards and regulations for compensatory mitigation projects. EPA and Army Corps released a detailed PowerPoint presentation, which reviewed the current Mitigation Rule and outlined potential changes for consideration. The agencies are seeking feedback on how such changes might impact state and local governments and any recommendations while the agencies develop a new proposed rule. The agencies are accepting pre-proposal comments through August 9, 2019.</p> <p>Comments can be submitted to MitgationRuleAmendment@usace.army.mil and copied to MitgationRuleStates@epa.gov.</p>	<p>Potential changes to compensatory mitigation regulations are relevant to local governments as we frequently undertake mitigation as part of road and bridge projects. For example, counties undertaking infrastructure-related projects may be required to “mitigate” if the project impacts wetlands. If the project does not have enough available “wetlands” on site to mitigate, counties may be required to buy mitigation in-lieu fee credits through mitigation banks.</p> <p>NACo’s policy encourages the Army Corps to give preference to mitigation projects in the local watershed where the in-lieu fee was collected and in consultation with local officials.</p>

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Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water	NPRM, Jan. 2017 Final Rule: Dec. 2019	RIN: 2040- AF55	<p>In January 2018, EPA held an Executive Order 13132 (EO 13132) Federalism consultation with state and local governments to discuss options on how to address lead and copper contaminants in public drinking water, especially since many of the nation’s 68,000 drinking water systems rely heavily on lead and copper pipes in their current system.</p> <p>Under the yet-to-be proposed rule, EPA is looking at several possible revisions to the Lead and Copper Rule (LCR) within the following areas: lead service line replacement, corrosion control treatment, tap sampling, public education and copper requirements.</p>	<p>This rule is expected to be “economically significant” for local governments that own or operate drinking water facilities and/or water utilities.</p> <p>In March 2018, NACo sent a letter to EPA including recommendations from local governments to ensure that any potential revisions to the LCR are effective, implementable, offer local flexibility and avoid a “one size fits all” approach.</p>
National Primary Drinking Water Regulations: Regulation of Perchlorate	NPRM: May 2019 Final rule: December 2019	RIN: 2040-AF28	<p>In June, EPA has begun the process for developing a National Primary Drinking Water Regulation (NPDWR) for perchlorate. Perchlorates are chemical compounds often found in propellants, such as in fireworks, bleaching agents, and herbicides, which may have negative impacts on human health. To read EPA’s powerpoint on the proposed rule, click here. The agency is accepting public comments until August 26, 2019. Comments can be submitted through www.regulations.gov identified by Docket ID No. EPA-HQ-OW-2018-0780.</p>	<p>This will impact any county that owns and/or operates a drinking water system who may be required to install new equipment to meet new standards.</p>
Municipal Solid Waste Landfill Liquids Management Regulations Under RCRA Subtitle D	ANPRM: May 2019 NPRM: TBD	RIN: 2050-AG86	<p>EPA is considering whether to create new national standards for the operations of “wet” landfills and bioreactor landfills. EPA plans to request information and data on the performance of wet landfills and bioreactors and request comments on whether new national standards are appropriate.</p>	<p>This proposal may be relevant for local governments that operate “wet” and bioreactor landfills. Wet and bioreactor landfills use water to speed up the decomposition of materials. This process creates more methane gas, as well as creates more space at existing landfills.</p>

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Increasing Recycling: Adding Aerosol Cans to Universal Waste Regulations	Final Rule: August 2019	RIN: 2050-AG92	EPA is considering a proposal to add hazardous waste aerosol cans to the “universal wastes” definition regulated by EPA.	The proposal may be relevant for counties that manage solid waste streams.
Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act; Reconsideration of Amendments	Final Rule: August 2019	2050-AG95	In January 2017, the EPA finalized a rule to amend the Risk Management Program (RMP) regulations under the Clean Air Act (CAA). Prior to the rule becoming effective, EPA received three petitions for reconsideration that raised concerns with provisions of the final rule. In May 2018, the EPA published proposed changes to the final rule to address specific issues being reconsidered and several other issues.	Under the 2017 RMP rule, over 11,000 facilities would be impacted, including 1,746 local government-owned water and wastewater systems, power plants, swimming pool facilities and emergency management activities. To read a NACo blog post on the 2017 rule, click here . To read NACo’s comment letter on the 2017 rule, click here . To read NACo’s comment letter on the proposed 2018 rule, click here .
Listing Per- and Polyfluoroalkyl Substances (PFAS) as a CERCLA Hazardous Substance	NPRM: Oct. 2019	RIN: 2050-AH09	Per- and Polyfluoroalkyl Substances (PFAS) are a group of man-made chemical compounds that cause water quality issues. PFAS can be present in products that are stain and water resistant, non-stick products (i.e. Teflon), paints, waxes, firefighting foam and food packaging materials. In recent years, PFAS has been tied to water quality issues outside of military airbases that used firefighting foam for emergency landings and near other facilities that use PFAS chemicals in their products. As a result, the EPA is currently assessing whether PFAS and related chemicals should be regulated as “hazardous substances” under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA/Superfund). If regulated under CERCLA, EPA then has response and enforcement responsibilities to address PFAS at the source, even before it gets into the water.	The presence of PFAS can impact counties as both regulator and a regulated entity. Since counties are responsible for public health and PFAS can impact water and air quality, counties may be sanctioned for non-compliance and be required to enforce regulations on local entities to meet health standards. However, some counties also own and operate facilities – water and wastewater plants, airports, landfills and firefighting training facilities – that may be required to address PFAS contamination. NACo’s policy supports efforts by the EPA and other federal agencies to study health and environmental impacts of PFAS compounds. Additionally, as the administration moves toward potential regulatory action, NACo urges the administration to work closely with state and local governments throughout the rule-making process.

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Federal Coal Combustion Residuals Permitting Program	NPRM: July 2019 Final Rule: May 2020	RIN: 2050-AH07	The Water Infrastructure Improvements for the Nation (WIIN) Act established a new coal combustion residual (CCR) regulatory structure under which states may request approval from EPA to regulate CCR facilities within their state; if approved, the state program would operate in lieu of the federal requirements. Additionally, WIIN instructed EPA to establish a federal permit program for the disposal of CCR in non-participating states.	Coal ash, a byproduct of combustion at power plants, can cause health problems and contamination if not properly handled. Coal ash, though, can be recycled for beneficial uses, reducing the need to dispose of byproducts in local landfills. By granting authority to the states to handle coal ash residuals, counties and other local governments can have a say in how coal ash is regulated. NACo's policy supports incentives for innovative uses of ash and other resource recovery by-products.
Review of the National Ambient Air Quality Standards for Particulate Matter	NPRM: March 2020	RIN: 2060-AS50	Under the CAA, EPA is required to review current air quality standards every five years for the six national ambient air quality standards (NAAQS) for carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide. EPA is currently reviewing standards for particulate matter (PM). The NAAQS PM was last revised in January 2013 and changed the regulations, last set in 2006, from 15 micrograms per cubic meter to a limit of 12 microgram per cubic meter.	Because of the high, naturally occurring dust levels found in arid climates, many western counties have a difficult time meeting PM standards. NACo's policy opposes any attempts by EPA to impose regulations more stringent than the 2012 PM standards for fine particles (PM 2.5).
Review of the Primary National Ambient Air Quality Standards for Ozone	NPRM: March 2020	RIN: 2060-AU40	Ozone is one of the six regulated pollutants under the CAA. Last revised in 2015, the new ozone standard tightened the standard of 75 parts per billion (ppb), last set in 2008, to 70 ppb. EPA designated 209 counties as in nonattainment under the new 70 ppb standard.	New air quality regulations have a direct impact on counties who must implement and enforce new regulations at the local level. To read NACo's fact sheet on the 2015 Ozone Rule, click here .

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Lead: Renovation, Repair, and Painting for Public and Commercial Buildings	Status: NPRM, uncertain	RIN:2070-AJ56	In 2008, EPA established a final rule to address lead-based paint (LBP) activities in housing and child care facilities. However, EPA was sued for not addressing LBP hazards in public and commercial buildings. In a settlement agreement, EPA agreed to determine whether activities that impact LBP in public buildings must be federally regulated.	This proposal will impact any county that owns a public building with lead-based paint.
Polychlorinated Biphenyls (PCB): Reassessment of Use Authorizations for PCBs in Small Capacitors in Fluorescent Light Ballasts in Schools and Daycares	Status: NPRM, uncertain	RIN: 2070-AK12	Due to a lawsuit, EPA is considering whether to require all building operators who may still use ballast light fixtures (common in buildings older than 1978 and have not been subject to energy efficiency upgrades) to replace them. These fixtures are common in older schools, hospitals, government centers, etc.	If EPA required an immediate replacement for all PCB fixtures, this would create a substantial unfunded mandate on local governments. NACo, along with other local government, school board and superintendent groups sent a letter under the auspices of Executive Order 13132 on the yet-to-be-proposed rule. To read the joint letter, click here .