



Tipping the Federal Scale - DC Extremes: FWQC Regulatory Updates

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Federal Water Quality Coalition

- Here are the key issues that Fred Andes believes would be most informative to WESTCAS members
- BUT, if you disagree, see the May 14, 2018 FWQC Active Priority Projects Matrix (39 issues FWQC is following)
- Also, influenced by my efforts and activities covered by the Federal StormWater Association (FSWA)

Selenium

- EPA's new fish tissue criteria, generally okay
 - Problem = EPA's draft permitting guidance
 - FWQC has commented on drafts/met with staff
- FWQC submitted permitting flow charts as an alternative to EPA's draft guidance
- FWQC members should use flow charts with State PAs re: selenium permitting approaches
- Status: Low priority for EPA

Conductivity

- EPA's draft criteria guidance leads to VERY low numbers (TDS of 130 mg/L)
 - FWQC opposes/commented that EPA should withdraw draft guidance
 - FWQC seeking meeting at EPA HQ re withdrawal
- Status: Low priority for EPA, and FWQC will attempt another meeting to attempt to get formal withdrawal of guidance

Human Health Standards

- EPA pressuring States to adopt very stringent human health WQS, based on fish consumption
- EPA: States should be more stringent than EPA, especially where Indian tribes are involved
- Key States currently: WA, ME and ID
 - but could come up in every State's triennial reviews
 - FWQC has developed issue papers for members to use with States working on triennial reviews
- FWQC will meet with EPA HQ to express concerns

WOTUS...stands for “what a mess”

- 2015 Rule challenges still pending (D.Cts) around country
 - appear to be moving forward, pending rule repeal
- EPA and Corps proposed 2015 Rule repeal, no final action yet
 - EPA and Corps may add new justification for repeal, seek comment soon
 - EPA/Corps extended applicability date to allow for repeal/replace
- EPA/Corps sent OMB new rule proposal on June 15
 - typically 90-Day review period

WOTUS...stands for “what a mess”

- Any/all final actions from above subject to court challenges
 - Hard to imagine resolution without Supreme Court
 - At least several years down the line...
 - New administration in 2020? Start over again?
- FWQC is tracking litigation; will comment on all FR notices
- Congressional brief in 6th Circuit case
 - Marry legal and technical approaches?
 - <http://www.btlaw.com/Amicus-Brief-Filed-on-Behalf-of-US-Senators-Representatives-in-Waters-of-the-US-Case-11-09-2016/>

Groundwater Discharges

- NGOs bringing suits → discharges to groundwater that lead to surface waters require NPDES permits
 - Some courts (including 9th Cir. in Maui County) agree that permits are required
- Substantial future impacts to all permittees, if all discharges to groundwater require NPDES permitting
- EPA's past/ongoing position: NPDES permits are required if there is a direct hydrologic connection to surface water
- EPA FR notice suggests a new/more refined approach
 - FWQC submitted detailed comments
 - Coordinating with other stakeholders re: upcoming meeting with EPA (not yet scheduled)

FWQC on Groundwater Discharges

- The CWA does NOT:
 - directly regulate nonpoint sources
 - indirectly regulate nonpoint sources with a hydrologic connection to surface waters
 - otherwise authorize EPA to regulate discharges of pollutants to groundwater that have a direct hydrologic connection to surface water
- “WOTUS” includes neither isolated, nontributary groundwater; tributary groundwater; nor hydrologically-connected groundwater
- Regulation of discharges to groundwater can be accomplished only by a legislative change, and not by Agency or judicial interpretation

MS4 Permitting

- MS4 Remand Rule: hybrid permitting approach
- MA and NH MS4 permit litigation (i.e. EPA!)
- 6 Minimum Measures:
 - Statewide “academic” models
 - Local/community flexibility?
 - EPA compendium vs. Regional permitting approach
 - Construction, post-construction, IDDE
- TMDLs, WQS, and MEP
- Upcoming ID MS4 proposed permit?

Emerging Contaminant: PFAS

- Sources = food, commercial household products, workplace, wherever concentrated (soils, organisms...)
 - stain- and water-repellent fabrics, nonstick products (e.g., Teflon), polishes, waxes, paints, cleaning products, fire-fighting foams, plating operations, manufacturing, etc.
- EPA Lifetime Health Advisory
 - PFOS + PFOA < 70 ppt
 - Perspective on 1 PPT?
- EPA National Leadership Summit
 - EPA and ASTDR/CDC
 - PFOS + PFOA, or more PFAS compounds?
 - Widely varying State positions re: standards

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