

Rural Water Issues Advisory [4/22/2019]

EPA Clarifies NPDES Protection as Supreme Court to Take-Up County of Maui Case: On April 15, 2019, the EPA issued an Interpretative Statement clarifying that under CWA/NPDES permitting, releases of pollutants to groundwater are categorically excluded from the CWA/NPDES permitting requirements because Congress explicitly left regulation of discharges to groundwater to the states and to EPA under other statutory authorities ([EPA Interpretative Statement](#)). If pollution travels through groundwater, EPA says it "breaks the causal chain" between a source of pollution and surface waters. The U.S. Supreme Court recently agreed to hear the Ninth Circuit's case of Hawai'i Wildlife Fund v. County of Maui. Interpretative Statements are not required go through a full rulemaking process under the Administrative Procedure Act. EPA's new policy applies to states outside the Fourth and Ninth Circuit Courts of Appeal which have existing interpretations of how the CWA/NPDES applies to discharges to groundwater that are different from the agency's interpretation.

Michigan Members of Congress Introduce Bill to Authorize USGS to Conduct Nationwide PFAS Sampling ([Env. Law Monitor](#)).

When Can EPA Usurp State SDWA Enforcement Authority? Federal Judge Rules Flint Residents Can Sue EPA for Damages: Last week, Judge Linda Parker of the U.S. District Court for the Eastern District of Michigan ruled that residents of Flint can sue the federal EPA over its response to the city's drinking water crisis. The judge found that the EPA is not immune from a lawsuit. Flint residents have long blamed EPA for waiting too long to intervene after knowing about lead levels in city's drinking water. *"These lies went on for months while the people of Flint continued to be poisoned... The acts leading to the creation of the Flint Water Crisis, alleged to be rooted in lies, recklessness and profound disrespect have and will continue to produce a heinous impact for the people of Flint,"* Parker, an Obama appointee, wrote in [her order](#). Flint residents alleged that EPA officials and employees negligently responded to the water crisis by, among other things, failing to utilize the agency's enforcement authority under the Safe Drinking Water Act sections 1414 and 1431 that grants the EPA a significant "element of judgment or choice" in its response.

New House Committee on Oversight and Reform Chairman Elijah Cummings (MD), "I'm not done with Flint": Might bring former Republican Governor Snyder back before Congress. Former Chairman Jason Chaffetz (UT) had closed the committee's Flint inquiry in December 2016 ([Detroit News](#)).

Fifth Circuit Orders EPA to Update Rule on Toxic Power Plant Wastewater: Siding with environmentalists, the court last week issued a decision directing the EPA to reevaluate modern wastewater treatment technology in regulations covering unlined wastewater pits operated by power plants ([U.S. Fifth Circuit Court](#)).

EPA Sends Perchlorate Rule to the White House: The Office of Management and Budget's (OMB) [website indicates](#) that it received the proposed maximum contaminant level goal (MCLG) on April 16. Generally, OMB is allotted 90 days to review rules before they can be published for public comment. EPA is under a federal court order to propose a rule by the end of the month. NRWA has questioned the risk-assessment modeling supporting the rule and the lack of an intelligible principle in the contaminant selection process ([NRWA 2018](#)).

State of Washington Passes Legislation to Compost Human Remains ([Seattle Times](#)).

Louisiana Senator Writes Bill to Create Rural Water Infrastructure Committee ([KNOE News](#)).

Washington Post Features Rural Martin County (KY) Drinking Water Problems: "Tap water smells of bleach, occasionally takes on a urine-colored tinge, and leaves her 7 and 8-year-old children itching every time they take a bath," ([WashPo](#)).