

Rural Water Issues Advisory [8/26/2019]

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U.S. Supreme Court (SCOTUS) Schedules Oral Arguments for Maui Indirect Groundwater Discharge Case: SCOTUS scheduled oral arguments for November 6th in its review of the Ninth Circuit's decision in County of Maui v. Hawai'i Wildlife Fund, et al. The case has significant implications for the scope of the Clean Water Act (CWA), with the Ninth Circuit having ruled that the eventual migration of pollutants from permitted underground injection wells through groundwater into surface waters violates the CWA. The Sixth Circuit rejected this theory of CWA liability on the basis that groundwater is a non-point source not covered by the CWA. The issue has significant implications for a whole host of activities that potentially could be subject to CWA permitting requirements if the rationale of the Ninth and Fourth Circuits is affirmed.

Flint in Violation of Lead and Copper Rule for Monitoring, Blames State: The city failed to provide adequate testing according to a notice the state sent to Flint last week. Flint officials accused the state of attempting "to make the city look negligent," noting that testing was delayed by the state ([Detroit News](#)). The city also is trying to combat "sampling fatigue" as the number of qualifying sites for sampling continues to decrease, an issue the city is attempting to address with EPA experts.

Aqua Illinois Faces Lawsuit from Attorney General and County State's Attorney Over Lead Contamination of their Drinking Water: The public attorneys are seeking a preliminary injunction that requires Aqua to act immediately to correct the situation as well as civil penalties, the maximums of which are defined in state statute (IL Attorney General [statement](#)).

City of Stuart, Florida, Wins Best Water at FRWA Annual Conference ([Treasure Coast News](#)).

California Lowers Reporting Level for PFOA & PFOS: California's main water agency lowered the level of PFAS detected in water that would trigger notification requirements. Water agencies will have to notify their governing board—whether it's their own board of directors or local government legislators—if they detect concentrations from 14 PPT for PFOA to 5.1 PPT, and from 13 PPT for PFOS, down to 6.5 parts per trillion. An estimated 3.5 million Californians use drinking water supplies where PFOS and PFOA exceed federal health advisory levels, but the extent of exposure is unknown.

Wisconsin to Regulate Fluorinated Chemicals: Governor Evers' executive order (August 22) creates task force to promulgate regulations for PFAS.

Georgia Court Faults Obama-Era Waters of the U.S. Rule: In an August 21 ruling, [Judge Godbey Wood](#) of the U.S. District Court for the Southern District of Georgia ruled that the 2015 CWA rule's definition of "waters of the United States" *fails to comply* with the former Supreme Court test in *Rapanos v. U.S.* The ruling found the EPA rule unlawful under the CWA because, based on the Supreme Court's interpretation of the law, the rule extends EPA jurisdiction over water and land beyond their delegated authority ([news](#)). In 2014, [NRWA commented](#) on the rule: *"The SCOTUS has recently and clearly interpreted the limits of federal authority in regulated water resources under the U.S. Constitution and the CWA. In 2001, the court ruled that the agencies have no jurisdiction over non-navigable, isolated, and intrastate waters... NRWA respectfully urges the Agency to withdraw the Proposed Rule and propose a different rule that is consistent with the Constitution and CWA – and respects the States' primary responsibility over the lands and waters within their borders and gives local communities clear guidance as to when the CWA's requirements apply."*

U.S. Justice Department (DOJ) Issues Another Memo on the Limits of Supplemental Environmental Projects (SEPs) in Permit Violation Settlements: In an August 21 memo, DOJ renewed policy that SEPs must win top-level approval ([U.S. DOJ](#)).

EPA Urges Regions To Step Up Actions To Reduce NPDES Noncompliance: EPA's enforcement office is urging regional offices to begin meeting regularly with states to develop plans to reduce significant noncompliance (SNC) with permits in order to meet a national goal of cutting in half the existing SNC rate of 29.4 percent by the end of fiscal year 2022 ([law firm](#)).

Microplastics In Water Everywhere says WHO: Microplastics are present throughout the world's drinking water supply and more research is needed to identify their potential effects on human health, the World Health Organization says ([UPI News](#)).

JAMA Pediatrics Publishes Study Connecting Fluoride in Drinking Water to Lower IQ in Children: The journal published "Association Between Maternal Fluoride Exposure During Pregnancy and IQ Scores in Offspring in Canada ([NPR](#))."

[National Rural Water Association](#)

Contact: Mike Keegan, Policy Analyst <keegan@ruralwater.org>

The National Rural Water Association is the country's largest public drinking water and sanitation supply organization with over 30,000 members. Safe drinking water and sanitation are generally recognized as the most essential public health, public welfare, and civic necessities.

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