

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
April 23, 2022

New (Old) NEPA Rule Finalized

That's the end of it, right? You wish. The White House Council on Environmental Quality this week [published a final rulemaking](#) on the implementation of the National Environmental Policy Act, the country's bedrock environmental law. What's in this final rule? Well, it seems as though they didn't take [the advice of some very wise commenters](#), and it's just a final rule that's nearly identical to the proposed rule from last fall. It's a final rule that does [what it set out to do](#) – just undo the damage done by the 2020 rule published by the previous administration. Most importantly, it returns the requirement that agencies consider the cumulative impacts of their decisions so we can avoid environmental [death by a thousand cuts](#). It also removed limits on what agencies could require in their NEPA procedures and allows better flexibility in determining what alternative actions can be considered.

But there are final rules and there are final rules. This one is just phase 1 of two phases of rulemaking planned by the White House. Like all big blockbuster sequels, expect the proposal for phase 2 to come out in the summer. Whether or not we also get an entire cinematic universe of spinoff lawsuits depends on whether some think phase 2 doesn't do enough or others think it does too much or any agency tries to go ahead with decision using the now-surpassed 2020 rule. Here's hoping for a Goldilocks phase 2 that fits just right and lets us move on to covering underreported topics, like PFAS!

Did Somebody Say PFAS?

Forever chemicals. They're enough to have you [freaking out, man](#). Maybe they at least remind you of [one of the greats in the modern song canon](#). PFAS (per- and polyfluoroalkyl substances) are those industrially produced chemicals that keep being produced, but never seems to leave the biosphere, so they're adding up and turning up in high concentrations, well, pretty much everywhere. Like in [fish](#) and [cows](#), far from where it started out in firefighter foam, nonstick pans, [outdoor recreation equipment](#), [baby food](#), [food packaging](#), [face masks](#),.... So why do we care? This isn't TUFoodPackagingWays. It's because this stuff builds up in and moves around in water and soils.

It's gotten to the point where it's contaminating [the Great Lakes and their tributaries](#), [the South Platte River](#), [groundwater wells for municipal supply](#), [West Virginia streams and West Virginians' blood](#), and, well, [pretty much everywhere](#). And that's just in the United States. It's been directly applied to millions of acres of farmland in the country. That's because a common source of fertilizer is sludge (or "biosolids,") from wastewater treatment plants. Farmers can buy it and spread it all over their land to increase its productivity. The

The **Tulane Institute on Water Resources Law and Policy** is a program of the Tulane University Law School.

The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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[Policy Officer on Climate Risks and Adaptation Policies](#); Institute for Sustainable Development and International Relations; Paris, France

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modern day [night soil fertilizer](#). But here's the problem, those wastewater treatment plants also process industrial wastes and their [effluent](#) and that [sludge is loaded with PFAS](#). In some places it's [completely destroyed once-healthy farms](#).

So who's doing anything about it? Well, legislators are legislating, litigators are litigating, and regulators are regulating. It's a whole lot happening all at once and no one knows if it's going to be enough to really turn this disaster around. On the legislation front, there's activity in [Congress](#), [Maryland](#), [Minnesota](#), and [Massachusetts](#). The EPA is strategically [roadmapping](#), [adding certain chemicals to its toxic list](#), and not do [the totally crappy job the FDA did for decades](#) (the same goes for [regulators in the EU](#)). The third leg in the change agent stool, litigation, is hard at work, too, in [Wisconsin](#), [New Jersey](#), and [Pennsylvania](#), and [lawsuits are popping up across the country against fast food chains](#) who wrapped their goods in PFAS-treated paper and packages.

All of this could help slow (Stop? [Ha!](#)) the further spread of PFAS into the environment and our bodies, but what about all that PFAS out there already? Well, scientists are finding that [some wetland plants can absorb](#) large amounts of the stuff, but then what are you supposed to do with a bunch of PFAS-soaked rushes? Luckily, some other scientists are having luck in lab settings with certain [microbes breaking down the chemicals](#) into other, hopefully less-harmful chemicals. Long term, the [hope](#) is that that process can be scaled up and those microbes can be used to remove PFAS at water treatment plants.

[Gimme Gimme Gimme](#) Some Climate Change Songs!

As announced [last week](#), we're doing another themed [playlist](#). We got a few suggestions for climate change songs, but we need more! Send yours to cdalbom@tulane.edu. He's got to listen and determine if it's actually about climate change, if it's just about how it's [hot in herre](#), or if maybe those [hot, hot, hot](#) songs are just fine for this playlist. No song is too unlistenable. Consider it penance for sins in this life and all the others.