

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy
[May 22, 2020](#)

[Crash On Hans's Levee](#)

[Han Solo](#)? [Hans Gruber](#)? [Hans Christian Anderson](#)? No, we are talking about Hans Albert Einstein of course! That's right—Albert Einstein is known for a great many things, but we bet you didn't know that his son, Hans Albert Einstein, was [instrumental in flood control on the Mississippi River](#)! (We didn't until recently). He led a team of engineers whose job it was to determine, based on hydraulics, where the [Old River Control structure](#) should be placed, as well as how it should look and be made to best control the River and keep cities like Baton Rouge and New Orleans safe and in business. The structure actually consists of three components each doing their part to tame the river: one is at the entrance of the Old River, another is the Overbank Structure, and, most importantly, the third is the Low Sill. These were completed in 1963, and the Corps of Engineers thought they had solved the problem for good, testifying upon completion that “[a] threat of catastrophic proportions has been ended forever.” Famous last words. This has been proved wrong time and time again, starting in 1973 when flooding almost destroyed the Low Sill. After this, the Corps decided to add another structure, and the Auxiliary Structure was completed in 1986. But, as we've seen [recently](#), the problem continues and the river is still rising. Will Hans Albert Einstein's structures be able to withstand all that climate change has in store for the Mississippi River? And if not, what does that mean for those of us downstream from those structures?

[Crises in Michigan](#)

Speaking of flood control structures not being able to withstand increased rainfall, the Edenville and Sanford Dams in Michigan failed due to an overflowing river. These failures forced 10,000 people in central Michigan to evacuate and could put the downtown portion of the city of Midland under 9 feet of water. The dams, which control the Tittabawassee River to create two lakes, were breached the morning of May 20. Despite no rain that day, flooding continued throughout the day and the river continued to rise, reaching a crest of 38 feet by that evening. What makes this even worse is that the [Federal Energy Regulatory Commission \(“FERC”\)](#) pulled Edenville Dam's license back in 2018 because of just what was showcased in this event: its inability to handle floods. After FERC revoked their license, oversight fell to the state, which found the Dam in “fair” condition just a month later. Of course, despite this, the Michigan Dept of Environment, Great Lakes and Energy shirked responsibility and passed it on to Boyce Hydro Power LLC, which is the corporation that maintains the Dam. [Michigan Governor](#) Gretchen Whitmar

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 less stewardship of water.

Coming up:

[The Future Ocean: What's in Store for Our Ocean Planet and Our Ocean Science?](#); May 27

[Louisiana Watershed Initiative Program Updates Webinar](#); May 28

[Public Comment Deadline re: Twin Pines Proposal to Mine Near Okefenokee Swamp](#); May 28

[Public Comment Deadline re: DEQ Proposed Portland Harbor Source Control Decision](#); May 29

[Public Comment Deadline re EPA's Proposed 2020 NPDES General Permit for Stormwater Discharges Associated w/ Industrial Activity](#); May 31

[Strategic Communications: H2O Virtual Event](#); June 1-2

[Neotectonics and Subsidence Expert Panel with Dr. Frank Tsai, LSU](#); June 3

[Dealing with Disruption: Operationalizing Resilience in the Water Sector Webinar](#); June 3

Water jobs:

[Associate Attorney \(water, environmental and local government law\)](#); Bartkiewicz, Kronick & Shanahan; Sacramento, CA

[Program Coordinator](#); Internet of Water at Duke University's Nicholas Institute for Environmental Policy Solutions; Durham, NC

[Water Law Associate Attorney](#); Young Wooldridge, LLP; Bakersfield, CA

[Attorney: Natural Resources & Water Law](#); Fujitani Consulting; Sacramento, CA

[Adjunct Faculty \(Environmental Science and Policy Program\)](#); Johns Hopkins University; Washington, D.C.

[Staff Attorney/Legal Organizer](#); [Legal Internships](#); [Fall Environmental Communications Internships](#); Center for International Environmental Law; Washington, D.C.

[Various Positions & Locations](#); Earthjustice

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declared that the state will be exploring and pursuing legal action against responsible parties, and FERC has also said that it would investigate the event.

Aside from the usual issues and damage that flooding of this scale causes, evacuation in the midst of a global pandemic is especially difficult and dangerous. Having to shelter with other people is not an ideal way to practice social distancing, and now the state is juggling two crises. In an effort to keep safe those who must evacuate, [state officials](#) are doing health screenings and distributing masks at designated shelters. [Dow Chemical](#) is also headquartered and has a massive plant in Midland, and although the company said that the facility was safely shut down, the thought of a flooded mass chemical production plant does not instill optimism. To make matters potentially worse, the flooding is in upriver of toxic Superfund sites. So, if everything goes the worst-case scenario route (which feels very 2020), this could become [even more catastrophic](#) for the people of central Michigan. On the plus side, rain is not expected again in the region for a few days, so hopefully the river is able to lower and the current slow enough that that won't be the case. [Elsewhere in the country](#), however, some residents in Roanoke County in West Virginia have been told to evacuate because the Western Virginia Water Authority is worried about a potential dam failure after recent heavy rain and the forecast for additional rainfall. Perhaps the name "Roanoke" is just an [indicator of bad luck](#).

More Happenings on the [Chesapeake](#)

In a continuation of [last week's](#) Chesapeake Bay Watershed saga, a lawsuit may be coming soon. This week, the [Chesapeake Bay Foundation](#) ("CBF"), as well as [Maryland, Virginia, and the District of Columbia](#) filed notices of intent to sue to the EPA, citing its failure to ensure that New York and Pennsylvania's Phase III Watershed Restoration Plans are met. Specifically, [they allege](#) that Pennsylvania has only reduced its nitrogen pollution into the Bay by half of what it pledged to do, and New York has only met its goals by about 61%. They point out that if this cleanup program is going to work, all of the states in the compact must do their part and the EPA must ensure they all do their part. Naturally, EPA Administrator Andrew Wheeler responded by essentially saying that it's not the EPA's fault or duty, and that the Bay is the cleanest it has been in 30 years thanks to the EPA. Although the Bay's health has been improving over time, the current administration has proposed to cut funding to Bay cleanup programs year after year. Additionally, as the notices of intent explain, according to [Clean Water Act Section 117\(g\)\(1\)\(A\)](#), EPA still shall ensure that states' Watershed Implementation Plans achieve nutrient goals set in the Chesapeake Bay Agreement; therefore, it must keep New York and Pennsylvania's Watershed Implementation Plans in compliance when they fall short, as they have now. The EPA has 60 days to make a formal response before the states can file a lawsuit.

This all happened just a day before the Chesapeake Bay was given a record-low 2019 [report card grade](#) (C-) by the University of Maryland Center for Environmental Science. This is the second year in a row that the Chesapeake Bay's grade has dropped, primarily due to record heat and bouts of extreme rainfall causing runoff pollution. In more positive news, the Center scored the entire Chesapeake Bay Watershed for the first time, giving it a B-. Slightly better, right? Further, a scientist with the Center [stated](#) that despite the Bay's recent lower grades, it is resilient and trends show that its health is improving over time.

Disregard Those Pesky [Rules and Regulations](#)

An executive order that essentially decimates regulations in the name of economic advancement is forthcoming. This week President Trump announced that he would be signing an [executive order](#) that will eliminate "unnecessary regulations that impede economic recovery." Wouldn't you know it? That includes "unnecessary" regulations like those that protect the environment and public health. Environmentalists are particularly worried about this because it seems as though the National Environmental Policy Act is a main target of the order. More than that, the order extends way beyond the COVID crisis. In describing the order, the President claims he ["want\[s\] to leave it that way,"](#) (as in, leave the nation deregulated), even after the pandemic. Has he been on the phone with [Bolsonaro](#) lately?

This executive order, coupled with the Trump Administration's [98 completed/in progress environmental rollbacks](#), portends a future where environmental laws play second or third fiddle to economic policies. If they hold up that is. There is only so far any President can go crafting their own environmental agenda, as the EO itself acknowledges. The caveat in the order is in its Section 9, which states that the executive order cannot impair authority given to an agency by law. How much comfort that gives is debatable given the fact that EPA is [relaxing](#)

[its own enforcement](#) in the name of the pandemic and [defending rollbacks](#) throughout this public health crisis. The silver-ish lining here of course is that there will be work for lawyers in sorting all of this out – as long as there's someone to hire them.

There's Still Time to Comment on [Forever Chemicals](#)!

Just a quick reminder about the new proposed PFAS rules for which the EPA extended the public comment period (and [we wrote about a few weeks ago](#)): there's still time to [submit comments here](#) until June 10th! We know that PFAS seem [scary and scientific](#), but we have done some of the work reading through some other comments (up to 311!), and compiled a few points with which commenters have the most problems. From our research (shout out to our great summer research assistants), one issue is regulating PFAS individually, rather than as a class. Many environmental groups and scientists believe that [regulating them as a class is the superior method](#). It would be an efficient precautionary measure, as there are over 4,000 substances considered PFAS, and therefore regulating them individually will take [an unreasonable amount of time](#). Related to this is the question that if PFAS are individually regulated, [how should PFOA and PFOS be regulated](#) (these are substances within the broader PFAS classification). And, should the same standard be used for all of them? Lastly, most commenters are concerned that the EPA's proposed level of regulation, 70 parts per trillion, must be even stricter as it is not stringent enough and would still endanger public health. We will keep you updated as we continue researching and writing our comments. We hope that this blurb made the public comment process seem a little less daunting and more approachable!