

TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

[April 23, 2020](#)

WOTUS—Previews of Coming Attractions

We have been telling you it was coming. “Heads up!” we have said dozens of times if we have said it once—and we sure said it once. Well, we told you and now it is happening. A duet by [Sam Smith and Demi Lovato](#)? Nope, though there is one. Baseball season? No—[though we wish it were true](#). We are talking about the much anticipated “Navigable Waters Protection Rule”, AKA the Waters of the United States rule that sets the boundaries of what the Clean Water Act protects and where taking care of waters and wetlands is the business of the states (though pretty much none of which they have any idea about). The final rule was announced back in January but the Trump administration did not publish that rule until this week. 60 days from now it will take effect—unless some court(s) enjoin it. Why might they do that? Our [analysis of the first draft of the rule from last April](#) might give you an idea. Better than that, we will soon be publishing an updated analysis and a line to line summary of how it differs from what came before. Judge for yourself whether this new rule makes things simpler and clearer or even squares with the jurisprudence that gave birth to it. Also, judge for yourself whether the new rule even squares with the [decision handed down by the Supreme Court this week](#) that deals with groundwater as a vector for polluting surface waters. [Read all about it.](#)

PFAS(T) Times

Worries about the vulnerability of drinking water supplies to PFAS contamination are growing pfast. Long used for such purposes as water proofing shoes, making nonstick kitchenware, and firefighting foam, several things have become clear about the known carcinogen in recent years. First, the [PFAS contamination is more widespread](#) than previously thought. Second, that there is no comprehensive regulatory monitoring of PFAS contamination. And third, reducing or eradicating PFAS pollution from water resources is difficult. Those are the conclusions of the a [report issued by the Environmental Working Group](#) anyway (not to be confused with the Environmental Protection Agency). The cost of dealing with PFAS contamination now falls on local governments, utilities and the often-unsuspecting public. The challenge was compounded recently by published reports that PFAS contamination can be spread not only by surface water and groundwater but by rain, yes rain. Help may be coming by from the Feds courtesy of authorizations in both water infrastructure bills now pending in the US Senate. If not, count on hearing more about the PFAS(T) and the furious.

Just Add Water andKABOOM

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 stewardship of water.

Coming up:

[Summer Sea Turtle Sustainability Grant Application](#)

Deadline: April 25

[Drinking Water Webinar: Harmful Algal Blooms \(HABs\) and Algal Toxins](#); April 28

[American Water Works Association Webinar: Innovation Roadmap for Utilities](#); April 29

Water jobs:

[Climate Engineering Fellow](#); UCLA School of Law; Los Angeles, CA

[Attorney Advisor \(environmental\)](#); Department of Transportation, Office of Chief Counsel, Maritime Administration (MARAD); Washington, D.C.

[Delaware River Watershed Fellow](#); The Nature Conservancy; Wilmington, DE

[Idaho Director](#); Western Watersheds Project

[Rachel Carson Environmental Organizing Fellowship for Students](#)

[Various Positions & Locations](#); Earthjustice

[Executive Director](#); Washington Water Trust; Seattle, WA

[Clean Rivers Program Supervisor](#); Guadalupe-Blanco River Authority; Seguin, TX

[Assistant Professor](#); Texas Tech University; Lubbock, TX

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Admit it, you thought you knew all about the ways water can mess with you. Floods, droughts, riptides, tsumamis, wet Willies, etc... The list goes on and on. But there is something we are pretty sure you did not think because we sure didn't. What could it be? Hint: Kilhauea. Yes, Mount Kilhauea the most spectacular volcano on the planet which would be a lot less spectacular without [its silent partner, rain](#). Yes, rain. According to study published in the [Journal Nature](#), the mountain's massive eruption in 2018 may have been triggered by rain water getting into rock cavities that then fracture allowing volcano things to happen. Sort of natural hydrofracking. Needless to say there other view points on this but from where we sit, we won't ever view a rainy day—[or night \(we love those\)](#)—the same way. [Cause we don't know where we would go when the volcano blows](#).

“Happy” Earth Day

This Wednesday was Earth Day but if there were not already a [National Irony Day](#) it might have copped that title, too. How else to explain the growing gulf between what we say about the environment (including in laws and regulations) and what we do to look after it. Same as it ever was perhaps but when one looks at patterns of enforcement, staffing levels and the reasons being advanced for new policies and rule makings it seems clear that what is happening in/to environmental law today is different. Case in point, the new rules governing the National Environmental Policy Act, which actually explained the need for the new rule, in part, because “In some cases, the NEPA process has slowed or prevented the development of new infrastructure and other projects....”*. Which of course is exactly what NEPA is supposed to do. Similar thinking is at play in the realms of [enforcement](#), staffing and regulatory functions—which are almost always referred to as “permitting” programs as though their only purpose was to issue permits, not to protect something important. The growing view that environmental laws are fine except when they get in the way of doing business is both unwise and at odds with the law itself. Indeed, not one word of the fundamental laws underlying the protection of our air, water, soil and environment has changed so the only thing you can count on is that many of the current rulemakings and policies will be challenged and some of those will succeed. When they do succeed it will not be because those laws are so perfect that they should not be changed or supplemented but because that will take a broader community bargain of the sort that created them. Earth Day is worth celebrating because this Earth is. Its stewardship demands ethics, laws, and policies that look beyond the near term, beyond the bottom line, and beyond self-interest but that does not discount those things. That is what environmental law does or aspires to do. And just like the Earth, no one should take it for granted.
