

TUWaterWays

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

[September 2, 2020](#)

EPA Tells Coal Plants to [Let It Go](#)

Soon it will be easier for toxics to flow more freely in water downstream from coal plants. On Monday, the EPA promulgated its final rule, known as the “[Effluent Limitations Guidelines](#),” which *almost* makes it sound like they implemented limits on effluent water pollution. Alas, names can be deceiving, and this rule actually [eases restrictions](#) on toxic runoff from coal power plants. [Yay](#). Wastewater from coal-fired power plants can contain high levels of mercury, arsenic, nitrogen, and selenium, and now will flow more freely into nearby waterbodies. The rule makes limits on selenium up to three times higher than the previous 2015 Obama-era rule and creates loopholes for some plants to avoid higher selenium limits. It also requires a shorter treatment process and allows some plants (those with high flows of wastewater and those that operate only during peak power) exemptions from that treatment process entirely. But wait, there’s more! The rule relaxes the timeline for coal plants’ compliance with these new limits. Despite all of that bad news, it could be thrown out in court – Earthjustice has spoken out against it, and a [2019 decision](#) by the U.S. Fifth Circuit Court of Appeals held that even the Obama-era rule was not strong enough and did not utilize best management practices. Or perhaps this is a matter for a certain [Toxic Water Center](#) to address.

Stay Calm, the NEPA Lawsuits are Here

Remember [a little while back](#) when we wrote about the current administration’s final rule overhaul of the National Environmental Policy Act (“NEPA”) and said that litigation was almost certainly imminent? Well, [it’s happening](#). Starting a few weeks ago, various groups and jurisdictions joined together to file three complaints (so far) against the Center for Environmental Quality (“CEQ”) and this new NEPA rule. First, two separate coalitions of environmental groups, one led by [Earthjustice](#), and another led by [the Southern Environmental Law Center](#), filed complaints against CEQ for the NEPA re-write (the SELC group also filed a [motion for preliminary injunction](#), to block implementation of the rule throughout the lawsuit). Then, a coalition of [environmental justice groups](#) filed their own joint complaint. Most recently, last Friday [a coalition of 21 states plus D.C. and Guam](#) filed another joint complaint against the CEQ.

The new NEPA rule included some major changes to the Environmental Impact Statement process, such as the narrowing of what is considered a “major federal action” that requires NEPA review, the removal of consideration of cumulative effects in the EIS, arbitrary time and page limits on EISs and EAs, and more. Plaintiffs assert that CEQ is in violation of the Administrative Procedure Act, and

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:

[Water Budgeting Webinar](#); September 2

[Public Comment Deadline on Lake Powell Pipeline Project Draft Environmental Impact Statement](#); September 8

[Virtual ResCon](#); September 8-10

[Gulf Spill Restoration—Louisiana Area Annual Public Meeting Webinar](#); September 9

[Hot Topics in Clean Water Law Webinar](#); September 16

[AWWA Webinar: Smart Water 2020: Building a Resilient Water Future](#); September 20

[National Coastal and Estuarine Virtual Summit](#); September 29-October 1

[Mississippi River/Gulf of Mexico Hypoxia Task Force Virtual Public Meeting](#); October 1

[WEFTEC](#); October 3-7

Water jobs:

[Information Specialist](#); St. Petersburg Coastal and Marine Science Center, United States Geological Survey; St. Petersburg, FL

[Counsel \(Environmental and International Law Practice Group \(LEGEN\)\)](#); The World Bank; Washington, DC.

[Legislative Associate/ Senior Legislative Associate](#); The Southern Environmental Law Center; DC.

[Staff Attorney, Fossil Fuels Program](#); Earthjustice; New Orleans, LA or Texas.

[Policy Manager \(Environment, Energy, and Climate Change\)](#); Massachusetts Institute of Technology; Cambridge, MA

[Policy Specialist \(Resilient Coasts & Floodplains\)](#); NWF; D.C.

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some also assert that CEQ is also in violation of NEPA itself. Based on the sheer number of groups already involved, it's safe to say that many people, at least environmentalists and environmental justice advocates, [don't like these changes or the way CEQ handled the public notice and comment process at all](#).

But, not everyone feels that way - some groups [love it](#). For example, the U.S. Chamber of Commerce is leading [a collation of business associations](#), including the American Farm Bureau Federation, the American Petroleum Institute, the American Road and Transportation Builders Association, and more, in supporting the NEPA overhaul. That coalition, called the "Unlock American Investment" coalition, announced last week that it has filed a motion to intervene on the SELC lawsuit. They claim, much like the Trump Administration, that NEPA slows infrastructure projects, and this overhaul will streamline the process.

If you want more than this short news blurb but don't feel like reading these lengthy complaints, have no fear! We have [our law student researchers](#) reading and analyzing them to provide a summary of what's going on in each case and will provide that once it is completed.

Natural Disasters, Environmental Justice, and Protection

Hurricane Katrina's fifteen-year anniversary was last Saturday, and it came shortly after Hurricane Laura brought similar widespread destruction to western Louisiana and southeast Texas. In her [recent CNN op-ed](#), Liz Williams Russell, one of the directors for the Climate Justice portfolio at the Foundation For Louisiana, wrote that vulnerable communities are disproportionately affected by natural disasters, and that the government must prioritize their risk reduction and focus on their recovery when rebuilding. This disproportionate impact is [especially true in Laura's case](#), as the hurricane tore through a major petrochemical corridor and set at least one factory ablaze near the already vulnerable [Mossville](#) community.

The CNN op-ed also points out that climate change, causing warming oceans and more erratic weather patterns, is a major contributor to the increased frequency and power of hurricanes, and that the 100-year storm is becoming less relevant as those occur. For example, the Hurricane and Storm Risk Reduction System that protects the New Orleans area is set to that 100-year level, and while it has improved greatly since Katrina, [it is still not adequate](#) to properly protect the area, let alone the most vulnerable communities in the area. It especially will not be sufficient in the future due to our changing climate. With that in mind, our shop will soon be publishing a white paper analyzing the 1965 Flood Control Act authorization of the Lake Pontchartrain and Vicinity Project, and whether the post-Katrina implementation requiring the Hurricane and Storm Risk Reduction System to comply with the National Flood Insurance Programs 1-in-100 year storm event negated that original authorization.

For Those Who Want to Help...

Tulane Law School's 1L class and Student Bar Association have organized a Hurricane Laura Relief effort that will be taking donations **until this Friday, September 4th**. They are collecting nonperishable food, water, and diapers for those affected by Hurricane Laura. So, if you would like to make any donations, please bring them to the collection bins in the Tulane Law School lobby, located at 6329 Freret Street. Of course, you'll need to be wearing a mask when you do so.