

**SEFLUC**  
**Regulatory Update**  
**March 12, 2018**

- **EPA Requests Comments on Conduit Theory**
  - **February 20, 2018** – EPA is requesting comments on whether it should clarify “the applicability of the CWA NPDES permit program to pollutant discharges from point sources that reach jurisdictional surface waters via groundwater or other subsurface flow that has a direct hydrologic connection to jurisdictional surface waters.” 83 Fed. Reg. at 7128. This includes:
    - Whether “subjecting such releases to CWA permitting is consistent with the text, structure, and purposes of the CWA”;
    - if EPA has authority to regulate discharges through groundwater, whether they “would be better addressed through other federal authorities as opposed to the NPDES permit program”; and
    - whether “some or all such discharges are addressed adequately through existing state statutory or regulatory programs or through other existing federal regulations and permit programs.” Id.
  - EPA also seeks comment on whether EPA should “clarify its previous statements concerning pollutant discharges to groundwater with a direct hydrologic connection to jurisdictional water in order to provide additional certainty for the public and the regulated community.” Id.
    - This could address the CWA’s applicability to hydrologically connected groundwater; define activities that would be regulated beyond direct discharges to jurisdictional surface waters (i.e., placement on the land); and define which connections are sufficiently “direct” to be regulated. Id.
  - This request for comments stems from the 9<sup>th</sup> Circuit Court decision in *Hawaii Wildlife Fund. v. County of Maui*, which held that discharging sewage into groundwater wells requires a permit under the Clean Water Act (“CWA”), where those wells are hydrologically connected to the Pacific Ocean. The Ninth Circuit reached this ruling not because the groundwater was itself a regulated water body under the CWA, which has long been within the sole control of state regulators. Nor was there a dispute that the sewage indeed reached the Pacific Ocean via the groundwater injection wells. Rather, the issue turned on whether a discharge to wells that eventually migrates to the Pacific Ocean through groundwater constitutes a “point source” that requires a permit under the CWA. In holding that it does, the Ninth Circuit focused on the well at the point of discharge, concluding that it is a clear “discrete conveyance,” and held that the discharge need not be “directly” to navigable waters, where the discharge to the “discrete conveyance” is “fairly traceable” to the ocean.
  - The decision is a noteworthy ruling on what has been termed the “conduit theory”—that groundwater can act as a “conduit” of pollutants from facilities/operations to traditional navigable water (surface water) and trigger

the need for a CWA permit. This theory has found its way into some recent district court decisions in different fact patterns, which are currently on appeal. The *Hawaii Wildlife* decision will be evaluated in these cases currently moving through the courts and has led the EPA to request public comment on the role of the conduit theory in the CWA.

- **Lower East Coast Water Supply Plan (LECWSP)**
  - **March 21, 2018 – 2<sup>nd</sup> Meeting at City of Boca 6500 Building**
  - <https://www.sfwmd.gov/our-work/water-supply/lower-east-coast>
  - SFWMD began effort to update LECWSP.
    - Currently working on demand projections
    - Modelling to follow
    - Expected to be completed in late 2018.
  - Utilities will have to update their 10-year water supply plans within 18 months of the Governing Board approval/adoption of the updated plan.
  
- **Cross Connection Control Annual Report – DUE MARCH 31**
  
- **EPA - Waters of the United States (WOTUS)**
  - <https://www.epa.gov/wotus-rule>
  - **February 6, 2018** - Environmental Protection Agency and U.S. Department of the Army finalized a rule adding an applicability date to the 2015 Rule defining “waters of the United States.” The final rule published in the *Federal Register* on February 6, 2018. **The 2015 Rule will not be applicable until February 6, 2020.** This amendment gives the agencies the time needed to reconsider the definition of “waters of the United States.”
  
- **Everglades Agricultural Area Storage Reservoir Project**
  - **On March 5, 2018**, the Florida Department of Environmental Protection (DEP) reviewed and approved the SFWMD Comprehensive Everglades Restoration Plan - Central Everglades Planning Project (CEPP) Post Authorization Change Report (PACR) proposing the Tentatively Selected Plan for the EAA Storage Reservoir (Alternative C240A). DEP approval of the CEPP PACR is required before the project is submitted to Congress for authorization or receives appropriation of state funds.
    - [Final DEP Order Approving the SFWMD Central Everglades Planning Project Post Authorization Change Report – Everglades Agricultural Area Storage Reservoir \[PDF\]](#)
  
- **Federal Lead and Copper Rule Revisions**
  - <https://www.epa.gov/dwstandardsregulations/lead-and-copper-rule-long-term-revisions>

- January 8, 2018 meeting - to discuss proposed revisions with intergovernmental stakeholders
  - **Link to presentation:** [https://www.epa.gov/sites/production/files/2018-01/documents/eo\\_13132\\_federalism\\_consultation\\_presentation-final\\_1.9.2018.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/eo_13132_federalism_consultation_presentation-final_1.9.2018.pdf)
  - EPA will post consultation materials, letters and comments at <https://www.epa.gov/ground-water-and-drinking-water/lcr-federalism-consultation> as they become available.
  - **EPA would appreciate any information, and specific data, state and local governments could provide on their experiences with:**
    - lead service line replacement
    - corrosion control treatment (studies and implementation)
    - sampling programs or
    - other aspects of drinking water lead control programs.
- December 14, 2017 - Consistent with E.O. 13132, EPA issued letters seeking input from state and local government officials, or their representatives during the development of the proposed revisions to Lead and Copper Rule.
- Current issues include:
  - Full lead service line replacement programs
  - Sampling method revisions
  - Filter mandates
  - Public notification
  - “Health Based” criteria development

**CONTINUING TO MONITOR:**

- **CFWI – No Change**
  - No rule development scheduled yet.
  - Steering Committees ongoing
  - SFWMD, SWFWMD, SJRWMD conducting peer review of work to expand East Central Florida Transient Groundwater Model in support of the 2020 Regional Water Supply Plan for CFWI area
    - January 25 Meeting
- **Chapter 62-554 Rulemaking – No Change**
  - Required by Section 373.475, F.S.
  - Notice of rulemaking establishing procedures for providing loans to local governments or water supply entities for the development and construction of water storage facilities to increase the availability of sufficient water for all existing and future reasonable-beneficial uses and natural systems.
    - Requires DEP to solicit proposals at least once per year (in years which funding is appropriated) for loans of up to 75% of the costs of planning, designing, constructing, upgrading, or replacing water resource infrastructure or facilities, whether natural or man-made, including the

acquisition of real property for water storage facilities. The loans are required to be a minimum of \$75,000.

- Details the information that a project sponsor must submit as part of its proposal, including evidence of permitability or implementability, evidence that the purpose of the water storage facility is consistent with applicable water supply plans, the public participation process, and financial feasibility. It also requires the project selection criteria to give special consideration of certain projects, as outlined in proposed Rule 62-554.300.
  - Include substantive requirements relating to the loan applications and agreements and state audits.
  - No workshop has been requested likely because there is currently no funding for this program
- **Public Notice of Pollution (62-4.600) – No Change**
    - Published Notice of Rule Development on November 1, 2017 requiring all reportable pollution releases that must be submitted to the Department by completing online form 62-4.600 Notice of Reportable Pollution Release, hereby adopted and incorporated by reference, and available at (hyperlink) or [www.floridadep.gov/pollutionnotice](http://www.floridadep.gov/pollutionnotice), and sending, by email to: [pollution.notice@dep.state.fl.us](mailto:pollution.notice@dep.state.fl.us).
    - No public workshop has been requested. FSAWWAUC did provide comments on December 5<sup>th</sup> to FDEP regarding the reporting.
    - Persons interested in receiving announcements of reportable pollution notices can subscribe to a mailing list at [www.floridadep.gov/pollutionnotice](http://www.floridadep.gov/pollutionnotice).
- **Perchlorate in Drinking Water**
    - EPA announced a public peer review meeting and the final list of expert peer review panelists to participate in a two-day peer review meeting on January 29-30, 2018, to discuss the scientific basis of the perchlorate supporting documents.
      - The public may attend the meeting in-person or via teleconference and may request to make a brief oral statement by pre-registering by January 17, 2018, using the process described in the Federal Register Notice. <https://www.federalregister.gov/documents/2017/11/28/2017-25714/peer-review-to-inform-the-safe-drinking-water-act-decision-making-on-perchlorate-in-drinking-water>
      - The final charge questions for the panel may be viewed in Docket ID No. EPA-HQ-OW-2016-0439 (<https://www.regulations.gov/docket?D=EPA-HQ-OW-2016-0439>) . Following the peer review meeting, a peer review summary report will be prepared and will be made available to the public.
    - Proposed action expected by October 31, 2018
- **EPA – “Partnerships” website**
    - Recently launched!

<https://epa.maps.arcgis.com/apps/Cascade/index.html?appid=cfccb8b4975d4d72869bd0770510c1b0>

- Three featured locations (none in Florida)
- Purpose is to showcase examples of water systems working together collaboratively to provide improved and more cost-effective service.
- **Unregulated Contaminant Monitoring Rule**
  - **After December 31, 2017** – PWSs serving more than 10,000 people are required to notify EPA:
    - Of sampling location and inventory changes
    - If unable to sample according to established schedule.
  - Within 120 days from sample collection: Laboratories post monitoring results to EPA's electronic reporting system, SDWARS.
  - Within 60 days from lab posting of data: PWSs serving more than 10,000 people review and approve data.
  - Presentation overviewing Fourth UCMR for PWSs can be viewed at <https://www.epa.gov/sites/production/files/2018-01/documents/sdwars-presentation-pws-webinar-slides.pdf>