



Small Communities Advisory Subcommittee and Water Workgroup Meeting
Tuesday, June 9th, 2020
3:00pm-4:00pm ET

Call to Order at 3:01pm ET

- *Brian Fulton: SCAS Chair; Administrator, Jackson County, Mississippi*
- *Michael Scuse: Water Workgroup Chair; Secretary of Agriculture, Delaware*

Welcoming Remarks from EPA Staff

- *Britt Carter: Assistant Deputy Associate Administrator, Office of Intergovernmental Relations*

Roll Call

- Administrator Brian Fulton (SCAS Chair)
- Secretary Michael Scuse (Water Workgroup Chair)
- Commissioner Kitty Barnes
- Supervisor Bruce Bracker
- Mayor Jose C. Aponte Dalmau
- Assistant City Manager Teri Goodman
- Delegate Evan Hansen
- Commissioner Joan Lee
- Supervisor Ann Mallek
- Deputy Mayor Cynthia Pratt
- Mr. Jai Templeton
- Secretary Jeff Witte

Update on WOTUS/Navigable Protections Rule and 401 Rule: *John Goodin: Director, Office of Wetlands, Oceans, and Watersheds (OWOW), Office of Water*

- **WOTUS/ Navigable Waters Protection Rule:**
 - On April 21, 2020, the EPA and the Department of the Army published the Navigable Waters Protection Rule to define “waters of the United States” (WOTUS) in the Federal Register. For the first time, the agencies are streamlining the definition so that it includes four simple categories of jurisdictional waters,



provides clear exclusions for many water features that traditionally have not been regulated, and defines terms in the regulatory text that have never been defined before. Congress, in the Clean Water Act, explicitly directed the Agencies to protect “navigable waters.” The Navigable Waters Protection Rule regulates traditional navigable waters and the core tributary systems that provide perennial or intermittent flow into them. The final rule will become effective on June 22, 2020. Once effective, it replaces the rule published on October 22, 2019.

- After signature, the Agency [recorded a webinar](#), which includes slides and narration.
- More information concerning the rule can be found at the EPA’s [Navigable Water’s Protection Rule website](#).
- ***Clean Water Act (CWA) Section 401 Certification Rule:***
 - As with NWPR, there is a [website with specific info and fact sheets](#) for the CWA Section 401 Certification Rule.
 - EPA will be holding a [webinar](#) on July 17th at 2pm ET to go over rule.
 - Under Section 401 of the CWA a federal agency may not issue a permit or license to conduct any activity that may result in any discharge into waters of the United States unless a state or authorized tribe where the discharge would originate issues a Section 401 water quality certification verifying compliance with existing water quality requirements or waives the certification requirement. Some of the major federal licenses and permits subject to Section 401 include: Section 402 and 404 permits (in non-delegated states), Federal Energy Regulatory Commission (FERC) hydropower licenses, Rivers and Harbors Act Section 9 and 10 permits.
 - The CWA provides that states and authorized tribes must act on their Section 401 authority within "any reasonable time not to exceed one year", with the reasonable period being decided by the federal permitting or licensing agency. A state or authorized tribe may waive the certification voluntarily, or by failing or refusing to act within the established reasonable time period. States and authorized tribes make their decisions to grant, grant with conditions, or deny certification requests primarily by ensuring the federally-licensed or permitted activity will comply with applicable water quality standards, effluent limitations, new source performance standards, toxic pollutants restrictions and other appropriate water quality requirements of state or tribal law.
 - E-mail cwa401@epa.gov for questions.
 - Questions:
 - What is the definition of point source?
 - The definition of point source pollution is directly tied to the current definition under the Clean Water Act.



- Does the Agency provide technical assistance to localities?
 - The Agency does not do so in an advocacy role but can send resources if requested.

Update on Harmful Algal Blooms: *Betsy Behl: Director, Health and Ecological Criteria Division, Office of Science and Technology, Office of Water*

- Hypoxic Water events have increased 30% since 1960s.
- The Harmful Algal Bloom and Hypoxia Research and Control Amendments Act of 2014 (also known as HABHRCA) requires the National Oceanic and Atmospheric Administration (NOAA) and EPA to advance the scientific understanding and ability to detect, monitor, assess, and predict HAB and hypoxia events in marine and freshwater in the U.S. The act also requires maintaining and enhancing a national program to control and mitigate HAB and hypoxia events, delineates the role of the Task Force (Interagency Working Group or IWG), and developing reports and plans to reduce the likelihood of HABs formation and mitigate their damage. A recent amendment (HABHRCA of 2017) provides EPA with the statutory authority to determine if a harmful algal bloom (HAB) or hypoxia event in freshwater is an “event of national significance.”
- On September 16, 2019, EPA published in the Federal Register a Notice of Intent requesting public comments to inform the development of an agency Policy on the Determination of a Harmful Algal Bloom (HAB) and Hypoxia as an Event of National Significance in Freshwater Systems. The comment period closed on October 31, 2019. EPA received over two hundred individual sets of comments and is currently utilizing the input received to develop the policy.
- Federal resources are contingent on congressional appropriations.
- EPA is planning a webinar to go over science in the rule, likely in the end of June or the beginning of July. Will send info once the plans are finalized. When they are finalized, they will replace EPAs currently numeric nutrient criteria.
- For more information please visit the EPA’s webpage on [HABHRCA](#)

Open Floor for Questions on Transboundary Water Issues: *Lee Forsgren: Deputy Assistant Administrator, Office of Water*

- Can you give us a couple examples of some of the transboundary issues going on around the country?



- The one that gets the most attention is the border between the US and Mexico.
- There are many issues between the US and Canadian border as well.
- There are some issues with between states, but EPA does not work on issues of water quantity, just water quality. Should a permit be granted? Is a downstream state be impacted by a permitting decision? This needs to be considered in the permitting. This can be addressed in the CWA 401 rule.
- Are water issues handled with International Transboundary Water Commission?
 - USMCA will have an effort that will deal with US/MX transboundary water issues

Closing

- Adjournment at 4:00pm ET