

CIBO Environmental Committee Meeting

Virtual

June 10, 2020

- Comments
 - CCR rule makings
 - ELG rule makings
 - Nutrient water quality criteria in reservoirs and lakes
 - WOTUS

EPA Proposed Changes to the CCR Rule

Published March 3, 2020 in Federal Register

Comments were due April 17, 2020

- Applicable to electric utilities and independent power producers that fall within the North American Industry Classification System (NAICS) code 221112

- Proposal

- Alternative Liner Demonstration

- REQUIRED LINES OF EVIDENCE
 - CHARACTERIZATION OF SITE HYDROGEOLOGY
 - POTENTIAL FOR INFILTRATION

- Use of CCR in Units Subject to Closure for Cause

- Closure of CCR Units by Removal of CCR

- Annual Closure Progress Reports and Notice of Intent To Close

WIINI Act

- Created a new program at EPA regarding the regulation of CCRs
 - Criteria for EPA approving a State Program
 - Coal Combustion Residuals State Permit Program Guidance Document; Interim Final August 2020
 - Note If the State Program submittal including regulating disposal of CCRs from {Industrial Sources and approved by EPA would make those sources potentially regulated under a Federal Program (oversight).
 - Criteria for an EPA CCR Program if the States did not seek Primacy.
 - EPA Published in Feb 20, 2020 Federal Register the rules for implementing the program
 - The comments are now due July 19 , 2020

Nutrient Criteria for Lakes and Reservoirs

- Proposed in late May – comments due July 21st
- EPA moving away from recommendation of single numerical standard for total N / total P
- Proposal is to use a model that takes into account specific factors about a lake/reservoir to derive numeric limit
- If finalized, become a reference for states/tribes to use when developing their own numeric standards – not a binding “must adopt” water quality criteria

WOTUS

The definition driven by SCOTUS!

- The change in the definition of WOTUS was driven by the SCOTUS decision suggesting “NEXUS”.
- The concept of “NEXUS” was applied very liberally and broadly.
- This result was an expanded definition that has been changed.

Now the MAUI Decision!

- The “Functional Equivalent” of a Direct Discharge Requires an NPDES Permit (Discharge to Groundwater to Surface Water)
- This ruling further muddies the water dealing with WOTUS as did the “NEXUS Ruling” that lead to the issue as to what WOTUS means including on going changes to its definition.
- The concept of “Functional Equivalent” has been an ongoing permitting issue for discharges to surface water even before the NPDES Program.
- If you assume NPDES is a discharge point, than a discharge to groundwater and the resulting discharge to surface water creates some very interesting issues
- How does this decision impact the recent EPA rulemaking on the definition of WOTUS and EPA excluding ground water?

Issues

- The final definition of WOTUS exclude groundwater from the definition.
- With a discharge to groundwater and groundwater to surface water, does the migration of the pollutant in the groundwater discharging to surface water need to be a defined “point source” or does it spread out like a plume covering a very wide zone of discharge over a large area (i.e., 7-day low flow).
- There are other programs that are and will result in an overlap of jurisdictions creating further uncertainties, including but not limited to
 - Safe Drinking Water Act
 - Injections wells, seepage pits, impoundments, etc
 - On-site lagoons without discharge (retention basins)
 - Brownfield Clean-up Standards
 - Groundwater Standards
 - On-lot Sewage Systems
 - Groundwater contamination (Chesapeake Bay Cleanup) being a legacy issue
 - Opening up CERCLA and RCRA Issues
 - Interstate Compact Commissions (Great Lakes, Delaware, Susquehanna, Potomac, and ORSANCO as examples).
 - SMCRA (regarding coal mining and its impacts on the hydrologic system)