K&L GATES

ENVIRONMENTAL POLICY QUARTERLY

Spring 2016

IN THIS ISSUE

REFORMS TO THE TOXIC SUBSTANCE CONTROL ACT COMING THIS YEAR

By: Cliff Rothenstein, Scott Aliferis, Kathleen Nicholas

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By: Brigid Landy, Cliff Rothenstein

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While it took well over a year for state and federal officials to publicly acknowledge that the failure to adequately treat water drawn from the Flint River was corroding its lead drinking water lines and contaminating drinking water, since then there has been a rush of activity to determine who is responsible and to point fingers at the opposing political party. Officials at all levels of government, including those running for the nation's highest office, have weighed in. Many officials are looking to take action in response to the crisis. As a result, the regulated community can expect updates to the Safe Drinking Water Act, to pertinent regulations at both the state and federal level, and perhaps even the way the Environmental Protection Agency ("EPA") delegates authority to state agencies implementing federal law.

READ THIS ARTICLE

SYSTEM FAILURE: HOW THE FLINT WATER CRISIS CAME TO BE

By: Brigid Landy

In the spring of 2015, from some vantage points the City of Flint seemed to be turning a corner. Michigan's seventh largest city was emerging from nearly three and a half years of financial receivership and poised to operate under a balanced budget for the first time in years. In December 2011, Flint's dire financial situation had led Governor Rick Snyder to appoint the first in a series of Emergency Managers ("EMs") to oversee the city's operations and bring it back from over $30 million in deficits. City staff was cut, pay was eliminated for the Mayor and City Council, and many of the city's public works were reevaluated, including the source of Flint's public water supply.

READ THIS ARTICLE

ENVIRONMENTAL PROTECTION AGENCY (EPA) PRIORITY RULES EXPECTED BY END OF 2016

By: Cliff Rothenstein, Kathleen Nicholas

A quick look at upcoming EPA rules expected to be issued or proposed by the end of 2016.

READ THIS ARTICLE

FROM THE EDITORS

Welcome to the Spring 2016 edition of Environmental Policy Quarterly, published jointly by the Environmental, Land and Natural Resources Practice Group and the Public Policy and Law Practice Group of K&L Gates. Environmental Policy Quarterly highlights significant developments and issues of public policy relating to the environment and natural resources in the United States and globally.

This edition focuses on reforms to the Toxic Substance Control Act, changes looming for the development of natural gas infrastructure, and the national policy response to the water crisis in Flint, Michigan. We've also included a snapshot of the EPA rules which are expected to be issued or proposed by the end of the year. We are delighted to include contributions by a number of K&L Gates lawyers who focus on these matters on a daily basis.

We hope you find this edition of Environmental Policy Quarterly of interest, and we welcome your feedback.

EDITORS

Cliff L. Rothenstein
Government Affairs Advisor
cliff.rothenstein@klgates.com

Craig P. Wilson
Partner
craig.wilson@klgates.com

OUR PRACTICES

ENVIRONMENTAL, LAND AND NATURAL RESOURCES

K&L Gates has experienced lawyers in the United States, Europe, and Asia Pacific who are dedicated to developing creative and cost-effective solutions to the environmental, land use, and natural resource challenges confronting our clients. A number of our environmental lawyers are former regulatory lawyers and prosecutors, having served with the U.S. Environmental Protection Agency, Department of Justice, Department of Energy, National Marine Fisheries Service, and state agencies. Our environmental practice recently was named "Law Firm of the Year" for environmental law in the 2013 U.S. News-Best Lawyers® survey, a recognition given to only one law firm in each practice area.

PUBLIC POLICY & LAW

The K&L Gates policy group is the largest of any fully integrated global law firm. The group has nearly 50 bipartisan lawyers and policy professionals with 500 years of combined experience in federal and state government. In 2012, we were ranked among the top five law firms in the National Law Journal's "Influence 50" survey. Our goal is to understand a policy issue from every direction—substantively and politically—and to use the collective knowledge and experience of our team to help a client achieve its objectives. This approach has worked for four decades, which is why the policy group has thrived through eight administrations and 21 Congresses.

PRACTICE CONTACTS

Environmental, Land and Natural Resources

David A. Franchina
Partner
dave.franchina@klgates.com

Craig P. Wilson
Partner
craig.wilson@klgates.com

Public Policy & Law

Darrell L. Conner
Government Affairs Counselor
darrell.conner@klgates.com

Michael Scanlon
Partner
michael.scanlon@klgates.com

RECENT DEVELOPMENTS:

WRDA

Congress has begun its work on WRDA legislation to authorize Corps of Engineers civil works projects and policies to develop and maintain harbors, channels, locks and dams. The Committees of jurisdiction (Senate Environment and Public Works Committee (EPW) and House Transportation and Infrastructure (T&I)) are both motivated to complete a bipartisan bill this year. EPW Committee Chairman Jim Inhofe (R-OK) is in his last term as Chairman because he is term limited by Senate Republican Caucus rules and Ranking Member Barbara Boxer (D-CA) is retiring. As such on April 27 the EPW Committee reported its WRDA legislation, which the full Senate will subsequently consider. House Transportation and Infrastructure Chairman Bill Shuster (R-PA) has also begun work on a WRDA bill, as his term as Chairman will expire at the end of the 115th Congress.

ENERGY BILL

Both the Senate and House have passed comprehensive bills aimed at modernizing U.S. energy policy for the first time since 2007. The two chambers will form a formal conference committee where they will reconcile the many differences between the two bills including over the permanent reauthorization of the Land and Water Conservation Fund contained in the Senate bill. Despite the differences, both House Energy and Commerce Chairman Congressman Fred Upton and Senate Energy Committee Chair Senator Lisa Murkowski have expressed eagerness in getting the bill to the President before the summer recess, which starts July 16.

GHG TRANSPORTATION PERFORMANCE MEASURES

On Earth Day the Federal Highway Administration (FHWA) published a proposed rule that among other things would for the first time, set performance measure for tracking carbon emissions from transportation projects. If finalized, the rule could elevate the importance of reducing greenhouse gas emissions in planning transportation projects and potentially influence funding decisions for future transportation projects. https://www.gpo.gov/fdsys/pkg/FR-2016-04-22/pdf/2016-08014.pdf

WATER INFRASTRUCTURE FINANCE AND INNOVATION ACT (WIFIA)

EPA is initiating a rulemaking action to implement the Water Infrastructure Finance and Innovation Act (WIFIA) program. WIFIA was passed as part of the Water Resources Reform and Development Act of 2014, P.L. 113-121. This action will establish guidelines for the application process, selection criteria, and project selection, as well as define threshold requirements for credit assistance, limits on credit assistance, reporting requirements, collection of fees and the application of other Federal statutes.

REFORMS TO THE TOXIC SUBSTANCE CONTROL ACT COMING THIS YEAR

Cliff Rothenstein, Scott Aliferis, Kathleen Nicholas

Bipartisan efforts to reform the Toxic Substance Control Act of 1976 (TSCA) sailed through the House and Senate last year. Both passed their bills in June and December, respectively, but efforts for the chambers to come to a consensus in conference have been thwarted by major differences in each version, as well as various political factors unrelated to the legislation. That said, architects of the reform bills remain confident that a final package will become law before the end of the year.

It is important to understand the differences in the House and Senate versions and how either's inclusion in a final deal would affect industry. Amending Title I of TSCA to clarify the federal role in evaluating chemical substances is at the heart of the reform efforts.

PREEMPTION

One of the most contentious provisions between the two versions deals with preemption. As currently enacted, TSCA primarily manages chemicals and leaves states some ability to set their own requirements under certain circumstances. If Congress were to adopt the Senate's preemption language, more certainty could be introduced into the regulatory framework. Opponents are worried that the stronger language could overturn stronger state regulations, such as Prop 65 in California. That law requires companies to list chemical ingredients that cause certain health concerns and goes beyond any current or proposed requirement under federal law. However, the Senate bill would bar states from acting on their laws until federal safety analysis is completed. Without taking a hard stance on either bill's language, the Environmental Protection Agency "supports an approach to preemption that provides a consistent regulatory regime for industry while allowing appropriate additional actions by the states" according to a letter by Administrator Gina McCarthy.

POTENTIAL FEES AND PENALTIES

Currently, TSCA only allows EPA to charge administrative fees for carrying out the regulation, with a cap of $2,500 per entity. The Senate proposal would allow the EPA to collect new fees on both new and existing chemicals. These fees would offset assessments necessary to safety inspections, rulemaking, information collection, and more. This version

would allow EPA to collect 25 percent of the total cost to administer TSCA, up to $25 million annually. Importantly, companies are required to pay 100 percent of safety assessments they themselves request. If the EPA decides to conduct an assessment, the company must pay 50 percent.

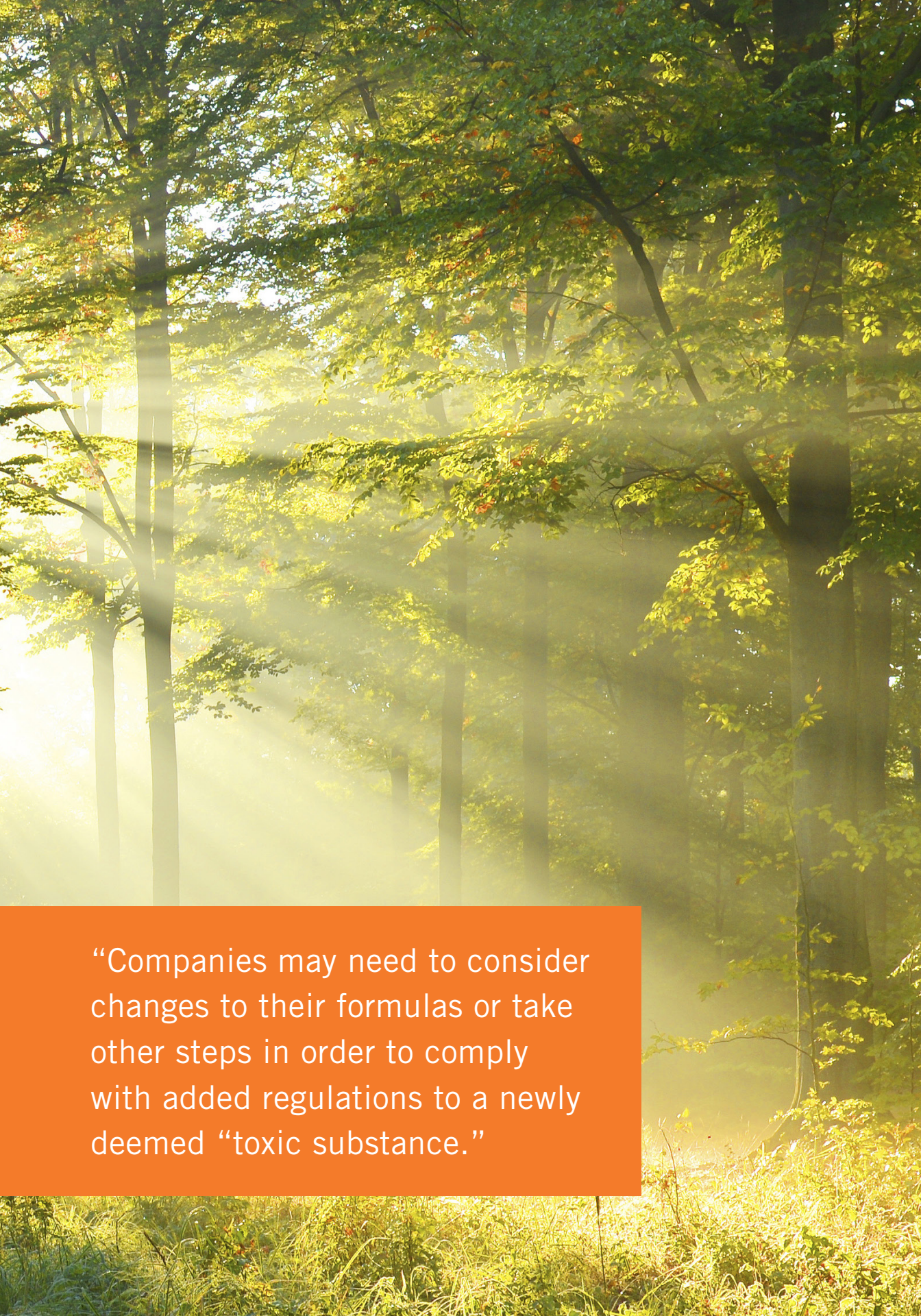
ENHANCED SAFETY STANDARD

Currently, the EPA is to take into consideration a cost-benefit analysis when determining if a chemical is safe for its intended use. Under the Senate reform bill, the EPA is only to take into consideration whether a chemical poses a risk of injury to health or the environment and not any cost of non-risk factors. This standard may increase the chances of a chemical being labeled "unsafe." Companies may need to consider changes to their formulas or take other steps in order to comply with added regulations to a newly deemed "toxic substance."

The Senate version contains much more prescriptive language on how the EPA is to conduct its safety evaluations. Should the final package contain this language, there could be more certainty in how the law would be implemented, whereas the House language allows for more potential flexibility that may prove problematic.

PROSPECTS

Chairman Jim Inhofe (R-OK) and Ranking Member Barbara Boxer (D-CA) of the Senate Environment and Public Works Committee told reporters in mid-March that negotiations between the House and Senate were ongoing. Sen. Inhofe maintains the most bullish attitude and is confident that differences



"Companies may need to consider changes to their formulas or take other steps in order to comply with added regulations to a newly deemed "toxic substance."

will be resolved and a final bill sent to the president this year. The sponsor of the House companion bill, Rep. John Shimkus (R-IL), said, "everyone remains optimistic." Also weighing in has been the EPA, who has expressed preference for much of the Senate bill's language, while also preferring the House bill's implementation provisions.

Once the bills are reconciled, the prospects of the bill seeing the floor of the House or especially the Senate remain uncertain. Both chambers will be focusing considerable attention to the appropriations process between April and June, after which Congress lets out for the summer campaign season. While it is possible a deal could be struck before the recess, it is additionally likely that we will not see significant action until the lame duck session in November.

[1] U.S. Congressional Research Service, "Proposed Amendments to the Toxic Substances Control Act (TSCA) in the 114th Congress: S. 697, S. 725, and H.R. 2576" R44024, J. Yen and A. Wyatt, July 8, 2015

AUTHORS

Cliff Rothenstein
Government Affairs Advisor
+1.202.778.9381
cliff.rothenstein@klgates.com

Scott Aliferis
Government Affairs Advisor
+1.202.661.3865
scott.aliferis@klgates.com

Kathleen Nicholas
Government Affairs Coordinator
+1.202.778.9287
kathleen.nicholas@klgates.com

CHANGES LOOMING ON THE HORIZON FOR NATURAL GAS INFRASTRUCTURE

David L. Wochner, Sandra E. Safro, Michael L. O'Neill, and Gillian R. Giannetti (K&L Gates) Casey O'Shea (FTI Consulting)

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On the domestic front, initiatives like the Clean Power Plan, which inevitably will encourage the continued deployment of natural gas power plants, and compliance with the December 2015 Paris Agreement on climate change will encourage U.S. demand for natural gas as a cleaner alternative to other fossil fuels. These developments should signal optimism for the natural gas industry as better integrated global energy markets have the potential to create efficiencies that boost domestic and international economic growth alike.

Potential changes on the horizon threaten to limit these positive developments. In particular, environmental groups and some government agencies have taken the position that the federal environmental review of midstream natural gas pipelines and LNG export facilities must be expanded to include the potential environmental impacts of upstream natural gas production and downstream combustion and end use of energy commodities.

This position runs counter to federal regulators' traditional approach to analyzing environmental impacts that recognizes the difficulty in tracing a particular natural gas molecule in a pipeline gas stream back across the vast integrated pipeline grid to its production well. With two federal appeals courts currently looking at this issue, the potential for an interagency disagreement on this point, and permitting timelines slowing down, project developers and investors must recognize and plan for looming uncertainties.

STATUTORY BACKGROUND

Section 3 of the U.S. Natural Gas Act ("NGA") divides jurisdiction over natural gas imports and exports between two federal agencies: the Department of Energy ("DOE"), which has authority over licensing imports and exports of the commodity; and the Federal Energy Regulatory Commission ("FERC"), which has exclusive jurisdiction over the siting, construction, and operation of the physical LNG import and export facilities. In addition, under Section 7 of the NGA, FERC has authority over the siting, construction, and operation of interstate natural gas pipelines, as well as rates and the terms and conditions of service.

Congress passed the National Environmental Policy Act ("NEPA") in 1969 to standardize federal agencies' review of environmental impacts of their actions. NEPA mandates a process through which agencies consider the direct, indirect, and cumulative impacts of their actions, including actions like granting federal permits. Both FERC and DOE must comply with NEPA when exercising their respective authority under the NGA.

For LNG import and export facilities, as well as for interstate natural gas pipelines, FERC acts as the lead NEPA agency. However, several other agencies provide environmental oversight within their areas of expertise and act as cooperating agencies in the NEPA process: U.S. Environmental Protection Agency ("EPA"); U.S. Army Corps of Engineers; and state environmental agencies. In the federal context, all of these agencies work together within the NEPA framework to assess the potential environmental impacts of a major federal action. The NEPA process also provides the mechanism for nongovernmental organizations and private citizens to offer input regarding the proposed federal action.

ENVIRONMENTAL POLICY SHIFTS AND POTENTIAL OBSTACLES FOR NATURAL GAS INFRASTRUCTURE PERMITTING

Over the past several years, environmental groups opposed to fossil fuel development and the construction of related midstream pipeline transportation and LNG export infrastructure have

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attempted to use the NEPA process as a tool to delay project developers' receipt of federal authorizations.

Several environmental groups, led by the Sierra Club and Delaware Riverkeeper, have argued that NEPA requires federal permitting agencies, like FERC, to consider both the potential environmental impacts from upstream natural gas production and the downstream (possibly overseas) consumption or combustion of natural gas when authorizing an interstate gas pipeline or LNG project. These groups argue that NEPA requires the federal permitting agencies to use existing studies of aggregated upstream production activities and similarly general downstream consumption data to inform the environmental review of the midstream natural gas pipeline projects and LNG export facilities.

Both FERC and DOE have resisted arguments to expand the scope of the NEPA review in this way. In their respective analyses of the environmental groups' arguments, FERC and DOE consistently have held that the analysis the environmental groups demand would not serve NEPA's goals as it would not provide meaningful additional insight. The agencies have further explained that the evaluations requested are too general, such as studies of upstream production at the resource play level rather than at the production well-specific level, or are inapposite for the analysis requested, such as misappropriating EPA's proposed "social cost of carbon" methodology for downstream impacts.

FERC consistently has held that NEPA does not require the inclusion of alleged upstream impacts in its analysis of specific pipeline projects or LNG export facilities because, under NEPA precedent, such impacts are not sufficiently causally related to be defined as an "indirect effect" of FERC's authorization of the pipeline or LNG export infrastructure. In reaching this conclusion, FERC often notes that natural gas production is likely to continue regardless of whether a specific midstream project goes forward.

FERC also consistently has held that the potential upstream and downstream impacts would not be "reasonably foreseeable," as defined in NEPA precedent, and therefore need not be considered in a NEPA analysis. One federal court upheld FERC's approach

on this issue in 2012, and as explained in greater detail below, several cases on this issue currently are pending in federal appeals courts.

OTHER FEDERAL AGENCIES SUGGEST AN EXPANSION OF FERC'S NEPA ANALYSIS

Despite FERC and DOE's position, there is some evidence that other federal agencies are open to the environmental groups' arguments. In December 2014, the Council on Environmental Quality ("CEQ"), the White House office that oversees government-wide implementation of NEPA, issued revised draft guidance related to federal agency consideration of greenhouse gas emissions and climate change issues in the context of NEPA reviews.

The CEQ draft guidance contemplates expanding the NEPA analysis to encompass downstream impacts by including impacts associated with consumption of the resource and provides a hypothetical NEPA analysis for an open pit mining project as an example. In its comments in response to the CEQ draft guidance, FERC focused on the CEQ's use of the phrase "reasonably close causal connection" to describe when GHG emissions upstream or downstream of the contemplated federal action should be included in the federal agency's review. FERC emphasized that absent a close causal connection between the midstream infrastructure project and the alleged upstream or downstream impacts, the potential impacts would not be "reasonably foreseeable." CEQ's guidance is still in draft form and, if the agency ever finalizes the document, the guidance would not require that other federal agencies like FERC adopt CEQ's approach in its entirety. Regardless, the draft guidance signals that at least a section of the executive branch is open to the environmental groups' arguments.

The U.S. EPA also has aligned itself with and adopted many of the arguments favoring potential upstream and downstream impacts. Commenting on FERC's updates to its Guidance Manual on natural gas and LNG infrastructure application requirements earlier this year, EPA Headquarters asked FERC to require project applicants to provide information on the potential for increased natural gas production and analysis of greenhouse gas emissions from the "production, transport, and combustion" of the natural gas associated with the project.

EPA's regional offices have offered similar comments on several LNG import and natural gas pipeline projects over the last several years, which FERC has rebuffed to date. These comments on the FERC Guidance Manual represent the first time that EPA Headquarters formally adopted the regional offices' position. With EPA's chief policymakers now raising similar issues, FERC may face more difficulty pushing back on what now appears to be EPA's preferred approach to the inclusion of upstream and downstream impacts in a NEPA review of an interstate

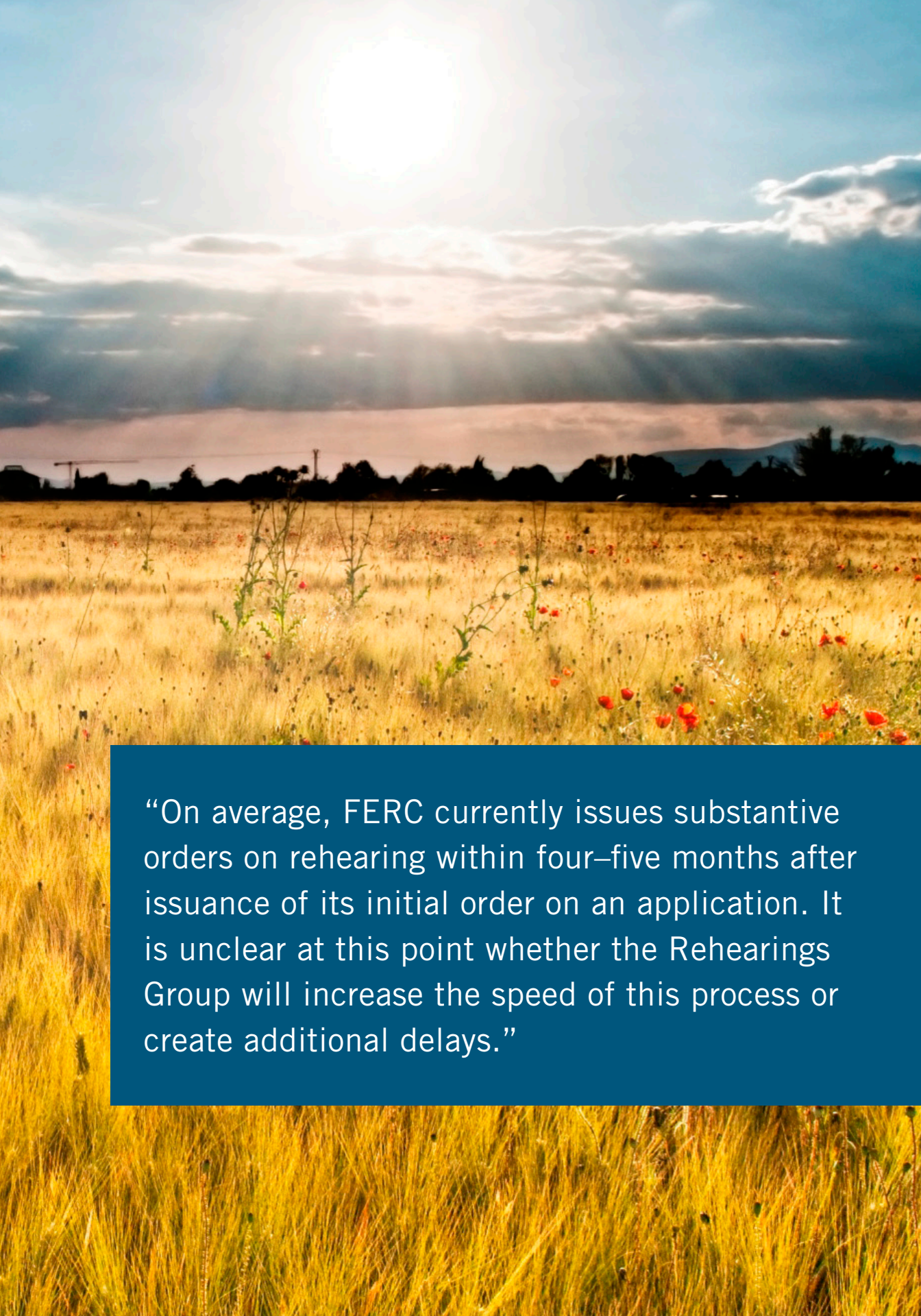
natural gas pipeline or LNG import or export facility. If disagreement between the agencies on this point continues to gain momentum, there is a possibility that it could spark an interagency dispute leading to CEQ arbitration.

In addition, project opponents hope to use the courts to compel FERC to adopt a more expansive approach under NEPA. Currently, there are seven cases pending before two separate U.S. Courts of Appeal challenging FERC and DOE's approach to upstream and downstream impacts. Five cases involve LNG terminals and two cases involve natural gas pipelines. The project opponents have pointed to both CEQ's draft guidance and EPA's regional office comments on GHG emissions to support their arguments in court. We expect the first of these cases to be decided in the second quarter of 2016, and the ramifications of this decision may extend throughout the midstream natural gas sector and beyond. If a court requires FERC or DOE to engage in significant new analysis regarding alleged upstream or downstream impacts, this new requirement would add time, cost, and complexity to the permitting process for all federally regulated natural gas and LNG infrastructure projects.

NEW REHEARINGS GROUP WITHIN FERC RAISES QUESTIONS

Finally, at its February 2016 monthly Commission meeting, FERC announced the creation of a new group within its Office of General Counsel that will be solely devoted to drafting orders in response to requests for rehearing ("Rehearings Group"). Any entity that is a formal party in a FERC proceeding has the right to request rehearing of the Commission's order on an application. The environmental groups that oppose natural gas development and infrastructure routinely have requested rehearing of the Commission's orders authorizing midstream natural gas projects. The Rehearings Group is intended to streamline the Commission's rehearing process, enhance efficiency, and to provide an objective review of the Commission's initial order and the arguments raised on rehearing. On average, FERC currently issues substantive orders on rehearing within four–five months after issuance of its initial order on an application. It is unclear at this point whether the Rehearings Group will increase the speed of this process or create additional delays.

Importantly for LNG export projects, DOE's recent practice has been to issue its order on an application to export LNG to countries with which the United States does not have a free trade agreement related to natural gas and with which trade is not prohibited ("non-FTA countries") only after FERC issues its order on rehearing for the related infrastructure. The industry historically has viewed receipt of such order from DOE (a "non-FTA order") as an important commercial indicator. There is legislation currently pending on Capitol Hill that would require DOE to issue its non-FTA order within a certain number of days



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of the issuance of FERC Staff's final environmental impact statement, moving issuance of the non-FTA authorization up by several months.

PROJECT DEVELOPERS AND INVESTORS CAN MANAGE THESE RISKS PROACTIVELY

Project developers and investors can take proactive steps to manage the risks that environmental policy shifts may place on the midstream energy sector by monitoring the evolving policy landscape closely, accounting for the interrelated jurisdictional mandates of different federal and state agencies, and engaging in the regulatory and judicial processes as necessary.

If a court expands the scope of the NEPA review, these require-ments could have the immediate effect of slowing down permitting for projects across the board while regulators attempt to address the court's requirements. Likewise agency rulemakings that
expand the NEPA analysis to include hypothetical upstream or downstream impacts may delay a project's permitting schedule. Developers can engage by participating in the regulatory process, intervening in appropriate judicial proceedings, and even pressing for legislation from Congress.

In addition, at both the individual and aggregate levels, project developers and investors can take steps to manage the political risk inherent in this confluence of regulatory, legislative, and judicial uncertainties. Implementing best practices along these lines can help shorten permitting timelines and build goodwill among host communities, policymakers, and regulators alike.

At the individual level, developers and investors should:

- Ensure the project has a public and government affairs function, strategic communications and issues management plan, a stakeholder engagement strategy, and a clear narrative that anticipates and mitigates aforementioned risks. Proactively manage the project narrative. Align commercial objectives, development timelines, and communications strategies;
- Educate key stakeholder groups regarding the existing robust legal and regulatory frameworks that provide for thorough environmental review while balancing the need for economic growth and energy infrastructure; and
- Mobilize stakeholders to demonstrate local support for the project on an ongoing basis, not just during comment periods or periods of high visibility. Build an ongoing partnership with your host community that reaches throughout the value chain and across traditional cleavages.

In the aggregate, developers and investors should:

- Consider standing up a fit-for-purpose entity designed to chall-enge these threats. Such an entity could drive the call for legislation while serving as an education and information hub for stakeholders; and
- Work within trade associations and other membership organizations to bring attention to the issue; call for engagement and escalation on the policy agenda.

AUTHORS

David L. Wochner
Practice Area Leader - Policy/Regulatory
+1.202.778.9014
david.wochner@klgates.com

Sandra E. Safro
Partner
+1.202.778.9178
sandra.safro@klgates.com

Michael L. O'Neill
Associate
+1.202.778.9037
michael.o'neill@klgates.com

Gillian R. Giannetti
Associate
+1.202.778.9345
gillian.giannetti@klgates.com

Casey O'Shea
Managing Director, FTI Consulting
+1.202.346.8812
casey.o'shea@fticonsulting.com

POLITICAL FALLOUT AND RESPONSE TO THE FLINT WATER CRISIS

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For a detailed factual breakdown of how the Flint water crisis came to be, please see the next article in this publication.

At hearings in February and March, members of the House Oversight and Government Reform Committee took turns berating top officials involved in the crisis, with Republicans taking aim at EPA Administrator Gina McCarthy and former Region 5 Administrator Susan Hedman. Democrats placed blame on Republican Governor Rick Snyder, the emergency managers he appointed to oversee Flint's finances, and his administration's Department of Environmental Quality ("MDEQ").

Administrator McCarthy has said MDEQ was uncooperative and intransigent, leaving EPA without the necessary information or authority to take control of the situation and notify Flint residents about the contamination. Governor Snyder has called the EPA's Lead and Copper Rule ("LCR"), which is intended to prevent lead from leaching into drinking water, "dumb and dangerous" and inadequate to keep people safe. His comments have been echoed by Virginia Tech professor Marc Edwards, who alleged that EPA has "effectively condoned cheating" the LCR since 2001 throughout the United States.

Flint's mayor at the time, Dayne Walling, lost his bid for reelection in November 2015. Both MDEQ's Director and Director of Communications resigned in late

"EPA Administrator McCarthy said her agency is working on revamping the LCR and expects a proposed rulemaking in 2017."

2015. Region 5 Administrator Susan Hedman resigned February 1, 2016. Later that month, the head of MDEQ's Drinking Water and Municipal Assistance Unit was fired.

Governor Snyder has publicly apologized on more than one occasion but has rejected numerous calls for his resignation. He is currently facing a movement to gather signatures for his recall in the November 2016 election. On March 23, a task force he established back in October 2015 released its final report and placed the blame primarily with two agencies under the Governor's control: MDEQ and the Michigan Department of Health and Human Services, "but principally the MDEQ." According to the report, "both agencies … stubbornly worked to discredit and dismiss others' attempts to bring the issues of unsafe water, lead contamination, and increased cases of Legionellosis (Legionnaires' disease) to light."

Michigan's Republican Attorney General William Schuette opened an investigation in January and filed criminal charges on April 20 against three officials involved in the crisis. Flint's laboratory and water quality supervisor Michael Glasgow and MDEQ employees Michael Prysby and Stephen Busch face felony and misdemeanor charges related to allegations that they tampered with or falsified water test results. Mr. Prysby is also charged with an additional misconduct in office charge, a felony, for authorizing a permit for the Flint water treatment plant when he allegedly knew it would fail to provide safe drinking water for residents.

President Obama has called the failure of government to notify the public as soon as it figured out that people were at risk, "inexplicable and inexcusable." The March 6, 2016 Democratic Presidential Debate between former Secretary of State Hillary Clinton and Senator Bernie Sanders was held in Flint, Michigan, with both candidates calling for Governor Snyder's resignation. Republican front runner Donald Trump declined to comment in great detail but said, "It's a shame what's happening … [a] thing like that shouldn't happen." Senator Ted Cruz provided a similar response, saying he had not yet been fully briefed on the issue. Ohio Governor John Kasich said he thought "the governor ha[d] moved in the National Guard and, you know, I'm sure he will manage [the crisis] appropriately."

At April's Congressional hearing, House members questioned representatives from the EPA and MDEQ and other individuals on the consequences of the tragedy, steps that have been taken, and steps that should be taken in the future to respond to the tragedy.

Meanwhile, legislators on Capital Hill have been working on a bipartisan effort to appropriate funds to Flint to replace and repair Flint's lead service lines and create a center to study the effects of lead. The bill would also set aside $70 million in subsidies to back low-interest loans to municipalities replacing aging water systems across the United States. One of the bill's sponsors, Senate Environment and Public Works Committee Chairman Jim Inhofe said that Flint's

crisis has "put a spotlight on the crisis we face across the nation."

Senator Inhofe's comments touch on an emerging theme from the Flint water crisis: that it is the leading edge of a protracted fight over the overhaul to the LCR and for funding to replace old water and sewer lines and other infrastructure that impacts public health and the environment.

EPA Administrator McCarthy said her agency is working on revamping the LCR and expects a proposed rulemaking in 2017. In addition to revisions to the rule, the EPA is reaching out to each state to ensure proper implementation of the existing regulation. On February 29, the EPA sent letters to the governor of every state, as well as each state's environmental protection agency, asking for cooperation and assistance in strengthening the protection of drinking water and ensuring public transparency and accountability in the implementation of the LCR. She said EPA will be meeting with every state drinking water program across the nation to ensure states are taking appropriate actions to identify and address lead action level exceedances and fully implementing and enforcing the important rule.

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AUTHORS

Cliff Rothenstein
Government Affairs Advisor
+1.202.778.9381
cliff.rothenstein@klgates.com

Brigid Landy
Associate
+1.717.231.4573
brigid.landy@klgates.com

SYSTEM FAILURE: HOW THE FLINT WATER CRISIS CAME TO BE

Brigid Landy

In the spring of 2015, from some vantage points the City of Flint seemed to be turning a corner. Michigan's seventh largest city was emerging from nearly three and a half years of financial receivership and poised to operate under a balanced budget for the first time in years.

In December 2011, Flint's dire financial situation had led Governor Rick Snyder to appoint the first in a series of Emergency Managers ("EMs") to oversee the city's operations and bring it back from over $30 million in deficits. City staff was cut, pay was eliminated for the Mayor and City Council, and many of the city's public works were reevaluated, including the source of Flint's public water supply.

Governor Snyder declared an end to the financial emergency in April 2015. As some were celebrating, a much larger issue – set in motion years earlier – was surfacing. Flint residents were expressing mounting frustration over the quality of the water coming from their taps and the impacts it was having on their families' health, but their complaints would not be addressed for nearly 18 months.

By the end of 2015, officials at all levels of government would be forced to publicly acknowledge mistakes surrounding the decision to temporarily draw water from the Flint River without implementing anti-corrosion treatment. The failure to implement this treatment, which is designed to prevent corrosion of antiquated service lines and the leaching of harmful minerals into the water supply, resulted in one of the largest man-made public health emergencies in U.S. history, the full impact of which may not be known for many years. This article covers how and why the decision to pump water from the Flint River was made, on what basis officials determined corrosion control treatment was not required, and the response from officials after the extent of the problem came to light.

HISTORY OF FLINT'S WATER SUPPLY

Flint's first municipal water treatment plant was built in 1917. It treated water pumped from the Flint River. A new plant was built in 1952. Then, in the early 1960s, Flint began planning a pipeline to bring water from Lake Huron. The project fell apart amidst a political scandal, and the city instead signed a 30-year contract to buy its water from Detroit.

Interest in a pipeline that would bring water from Lake Huron was renewed after

“The failure to implement this treatment, which is designed to prevent corrosion of antiquated service lines and the leaching of harmful minerals into the water supply, resulted in one of the largest man-made public health emergencies in U.S. history, the full impact of which may not be known for many years.”

a 2006 feasibility study was conducted at the request of the Genesee County Drain Commission. The Drain Commission is responsible for the construction and maintenance of water supplies and for wastewater collection and treatment in the county. It purchases water from Detroit's water system, drawn from Lake Huron, and distributes it to 19 municipalities in the county, including Flint.

Soon after the pipeline feasibility study was released, the predecessor to a municipal water supply system known as the Karegnondi Water Authority ("KWA") began developing plans to build a pipe-line to deliver raw water from Lake Huron to the City of Flint, as well as other municipalities and customers along the pipeline route. The KWA is made up of the Drain Commissioners from Genesee, Lapeer, and Sanilac counties, as well as the cities of Lapeer and Flint.

Officially formed in October 2010, the KWA argued the new pipeline would avoid the already high and increasing water rates from Detroit, a city itself notoriously strapped for cash. The KWA and other critics said the rate formula in the Detroit agreement was flawed and penalized Flint because rates were calculated based on elevation and distance from Detroit. Flint is about 70 miles from the Motor City.

At Flint's request, in July 2011 an enginering firm presented the Flint City Council with an evaluation of Flint's options for drinking water. The report compared signing a new contract with Detroit to either: (1) switching to the Flint River or (2) joining the KWA. Before the City would choose an option, the City's authority to make such a decision was transferred to the state-appointed EM, who took over in December of 2011.

FLINT CITY COUNCIL'S VOTE TO JOIN KWA PIPELINE

Despite the presence of an EM, the City Council continued to meet and vote on recommendations to the EM for major actions in Flint. Michigan's financial emergency law requires that decisions meeting a certain monetary threshold be approved by the State Treasurer, upon recommendation from the EM.

By December 2012, it appeared the City Council had eliminated the option of using the Flint River as a permanent water supply. In a report prepared at the request of the Michigan Treasury Department, an engineering firm stated its "preliminary investigation evaluated the cost associated with the required improvements to the plant and to the Flint River dam system. Although it appeared that this was a viable option, Flint[,] in a meeting on December 20, 2012 with the Treasury, stated that the City did not want to pursue the option and it is no longer being considered."

On March 23, 2013, Flint's City Council voted 7 to 1 to switch its water supply from the Detroit Water and Sewerage Department ("DWSD" or "Detroit") to the future KWA pipeline. Detroit strongly opposed the change and issued a press release criticizing the move. Flint's EM

at the time, Ed Kurtz, and then Mayor Dayne Walling forwarded the City Council's vote on to State Treasurer Andy Dillon for final approval.

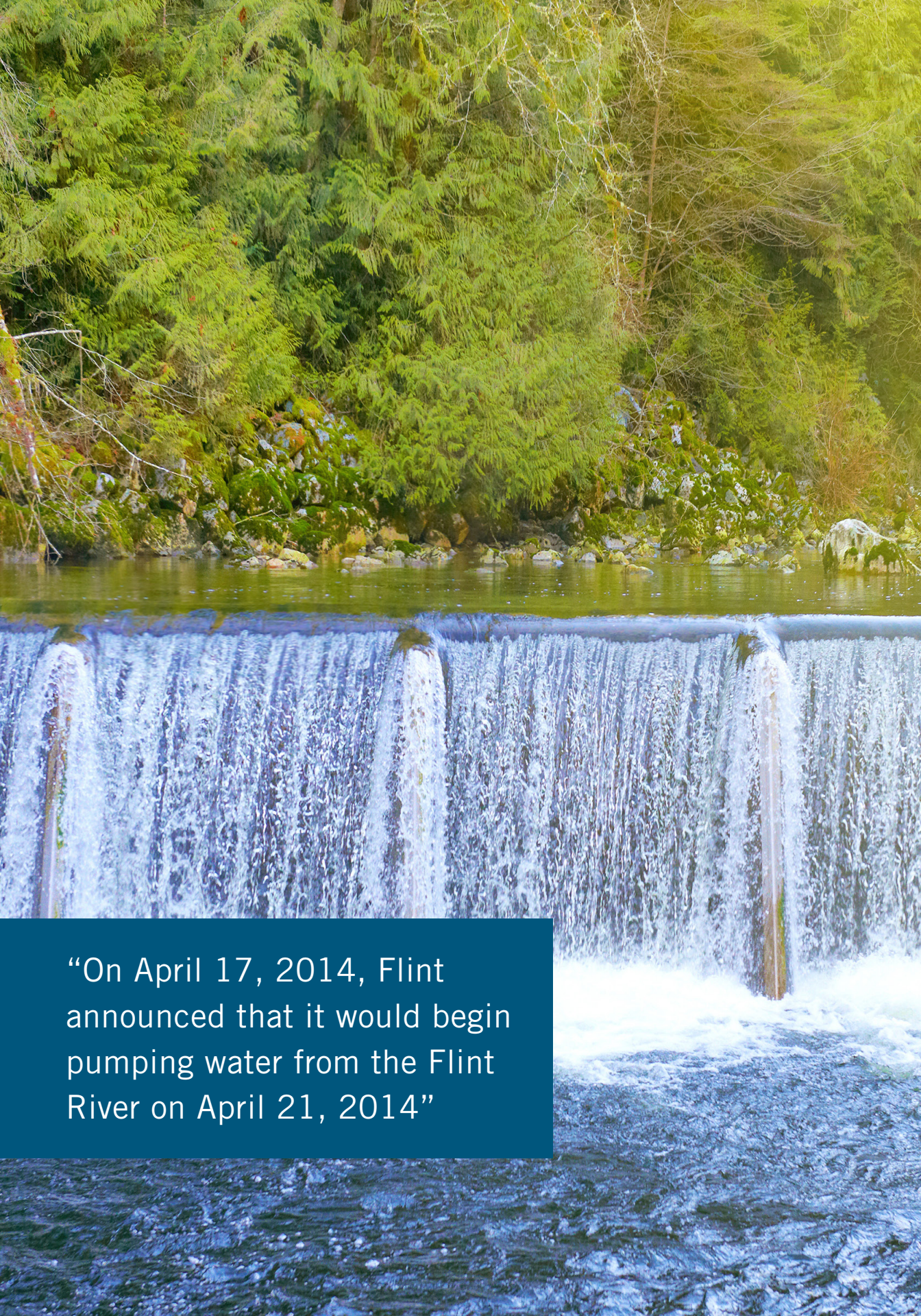
On April 11, 2013, Dillon told EM Kurtz that the state would approve the Flint City Council's decision to switch to the KWA but that Dillon would entertain one final offer from Detroit. The offer fell short. According to Genesee County Drain Commissioner Jeffrey Wright and EM Kurtz, Detroit once again offered "zero guarantees that over the course of the 30 year contract we will not find ourselves back in the same position we are in today, with yearly, unsustainable double digit rate increases." With the State Treasurer's approval, EM Kurtz signed the KWA agreement on April 16, 2013. The switch was projected to save the city $19 million over eight years. The next day, Detroit gave Flint the requisite one-year notice that it would be terminating its contract to sell water to Flint.

Construction of the KWA pipeline began in June 2013 but was not expected to be completed until spring 2016. Thus, Flint officials were next faced with the question of how to supply water to city residents after the Detroit contract expired and until the KWA pipeline was complete.

DECISION TO USE FLINT RIVER ON INTERIM BASIS

Not surprisingly, no official or agency has come forward to claim responsibility for proposing the city use the Flint River until the KWA pipeline was complete. Many have criticized the Governor's office for conflating Flint City Council's March 2013 vote to switch to the KWA with a March 2014 decision to pump from the Flint River. Documents currently available to the public paint a murky picture, but the move appears to have been the work of the state-appointed EMs.

As noted above, Flint's City Council appeared to abandon Flint River as an option in December 2012. Then, on June 26, 2013, EM Kurtz authorized payment to an engineering firm "for assistance placing the Flint Water Plant into operation using the Flint River as a primary drinking water source for approximately two years…" The following week, representatives from the engineering firm, Michigan's Department of Environmental Quality ("MDEQ"), Genesee County, and Flint's water department met to discuss the feasibility of switching to the Flint River. The group determined, "the Flint River would be more difficult to treat but is viable as a source."



“On April 17, 2014, Flint announced that it would begin pumping water from the Flint River on April 21, 2014”

While plans to draw water from the Flint River were being developed, the EMs continued to negotiate with Detroit to purchase water at non-contract prices until the KWA pipeline was complete. Michael Brown was appointed EM in July 2013. Darnell Earley took over in October 2013.

On March 7, 2014, EM Earley sent a letter thanking the DWSD for the option of continuing to purchase water but stating that Flint had been "actively pursuing the Flint River as a temporary water source while the KWA pipeline is being constructed" and that the Flint Water Treatment Plant would be fully operational before the April 17, 2014 contract termination date. He said as long as the plant opening remains on schedule, "there will be no need for Flint to continue purchasing water to serve its residents and businesses after April 17, 2014."

MDEQ APPROVAL

On March 12, 2014, Flint city officials held a groundbreaking ceremony marking the start of the process to switch to the Flint River. But on March 28, an MDEQ representative said it did not yet have the proper paperwork for the requisite permit to do so. While MDEQ had received "preliminary design plans and preliminary specifications," it had not yet received an actual application, which typically takes 30 to 45 days to review. Flint's Director of Public Works, Howard Croft, responded that Flint had indeed submitted "a fully engineered construction package, including all the work to be performed" and that "the submittal package ha[d] been under review for more than 30 days." A permit application dated March 31, 2014 was approved by MDEQ on April 9, 2014.

On April 17, 2014, Flint announced that it would begin pumping water from the Flint River on April 21, 2014, and that representatives from the MDEQ would ensure that treatment upgrades for which the plant had been issued permits were complete.

After a brief delay attributed to last-minute construction work on the plant's disinfection system, Flint officially began pumping water from the Flint River on April 25, 2014. In a press release announcing the change, the City of Flint and EM Darnell Earley assured residents the Flint River was a safe source of drinking water and had served the community safely as a back-up source on a number of occasions, including as recently as 2009.

The release also assured residents that MDEQ's Office of Drinking Water had "verified that the quality of the water being put out meets all of our drinking standards and Flint water is safe to drink."

MOUNTING PUBLIC PRESSURE AND GOVERNMENT'S INITIAL RESPONSE

Almost immediately, there was a noticeable difference in the water coming from Flint residents' taps. The response from city and state leadership was that the water was safe to drink.

In June 2014, the city announced that it was treating the water with lime in response to complaints, noting that the water was significantly harder than water from Detroit but the water was safe to drink. Mayor Walling said "people [were] wasting their precious money buying bottled water."

In August, the city issued a boil-water advisory after tap water tested positive for total and fecal coliform. When the advisory was lifted, both city and state representatives assured the public the city's water system underwent significant testing, "above and beyond MDEQ's requirements," and was safe to drink.

In October 2014, General Motors announced it would stop using the city's water supply because it was corroding parts at its engine plant. In January 2015, residents held protests outside City Hall and complained of rashes on their children. The EM at the time, Jerry Ambrose, said it would be too expensive to switch back to Detroit water.

On February 18, a lead test by the MDEQ at the home of Flint resident Lee-Anne Walters showed lead levels at 104 parts per billion (ppb), substantially above the federal Environmental Protection Agency ("EPA") action level of 15 ppb. Ms. Walters sought the testing after her son Gavin and his siblings experienced recurring rashes and other health problems. She had been seeking answers to her children's mysterious health problems since the previous spring. Later lead tests in her home would reach higher than 10,000 ppb.

Ms. Walters called the EPA to inform them of the lead testing results and that her son had been diagnosed with lead poisoning. She was referred to Miguel Del Toral, an EPA employee with experience in water contamination. After discussing the possible causes of the lead in her water with Mr. Del Toral, and further investigation on her own, Ms. Walters discovered that the City of Flint was not implementing corrosion control treatment and told Mr. Del Toral. Ms. Walters also contacted Marc Edwards, a water quality expert and professor at Virginia Tech.

LEAD AND COPPER RULE

EPA's "Lead and Copper Rule" ("LCR") was promulgated in 1991. It created a new requirement that water systems begin to obtain and maintain "optimized corrosion control" ("OCC") by 1998 in order to prevent lead and copper from leaching into drinking water from old water service lines. State environmental agencies were delegated the responsibility of implementing the federal rule. Lead exposure can lead to health problems including stomach pain, irritability, developmental delays, brain damage, and death. Children under age six are particularly vulnerable.

When the rule was first promulgated, it was designed to be implemented over time, with incremental deadlines in 1994, 1995, 1997, and 1998. Detroit's water system conducted required monitoring in 1992, then conducted an extensive optimization study, and eventually implemented a full-scale phosphoric acid

treatment program at all five of its water treatment plants in the fall of 1996.

Under the LCR, a water system is permitted to establish that it is "deemed to have optimized corrosion control" and is,in such cases, "not required to complete the applicable corrosion control treatment" if it meets one of three criteria listed in the rule. The rule allows any size water system to establish that it has OCC by submitting results of tap water monitoring and source water monitoring that demonstrates for two consecutive six-month periods that the difference between the 90th percentile tap water samples and the highest source water samples is less than 0.005 milligram per liter.

The LCR does not specifically address what is required when a city such as Flint changes its water supply from a system that had already obtained optimized corrosion control, such as Detroit, to a new system.

When Flint began pumping water from the Flint River, MDEQ appears to have taken the position that Flint's water system was starting from scratch, just like water systems did when the LCR took effect. It would permit Flint to show that its system should be "deemed to have optimized corrosion control" by submitting the results of two six-months monitoring periods. MDEQ gave Flint the okay to "wait and see" how the pipes would react with the Flint water before requiring it to design and implement corrosion control treatment ("CCT").

In June and July 2015, representatives from MDEQ and EPA held conference calls to discuss the lead levels found in Ms. Walter's home and whether Flint was properly following the LCR.

In July, an internal EPA memorandum written by Mr. Del Toral dated June 24, 2015, was leaked to the press. In it, Mr. Del Toral expressed concern over the corrosive properties of the Flint River, the lack of CCT, and the high lead levels found in Ms. Walter's home. After the memorandum was leaked, EPA Region 5 Administrator Susan Hedman apologized to Flint's Mayor for the leak, called the memorandum a "preliminary draft," and said it would be "premature to draw any conclusions based on that draft."

On August 17, MDEQ finally sent a letter to Flint recommending anticorrosion treatment, telling the city it would have until the end of the year to provide input and that the state is "planning to have the treatment in place by Jan. 2016."

However, the pressure from outside groups continued to mount and would force EPA, MDEQ, and Flint officials to act faster. On August 31, 2015, Virginia Tech professor Marc Edwards released a study showing that 42% of the 120 initial samples taken from Flint homes had lead levels above 5 ppb and 23% showed levels above the EPA action level of 15 ppb. He explained that their testing found chloride levels about eight times higher than Detroit's water, evidence of the corrosive properties of the water.

In response, the City of Flint and the MDEQ continued to assure residents the water was compliant with safety mandates of the MDEQ.

On September 25, 2015, a group of doctors led by Dr. Mona Hanna-Attisha announced a study that found high levels of lead in the blood of Flint's children. State regulators continued to push back, challenging the accuracy of the doctors' test results and insisting the water was safe. MDEQ spokesperson Brad Wurfel defended the MDEQ's original inter-pret-ation of the LCR, saying "You have to do a full year of studying" the water's chemistry as it behaves across the system before implementing corrosion control.

On October 1, 2015, more than 18 months after Flint switched to the Flint River for its water supply, Genesee County Commissioners held a press conference to urge residents to stop drinking their tap water. Two weeks later, Flint reconnected to Detroit's water supply.

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AUTHORS

Brigid Landy
Associate
+1.717.231.4573
brigid.landy@klgates.com

ENVIRONMENTAL PROTECTION AGENCY (EPA) PRIORITY RULES EXPECTED BY END OF 2016

Cliff Rothenstein, Kathleen Nicholas

Rule	Description	Projected Date
Source Determination for Certain Emissions Units in the Oil and Natural Gas Sector Docket ID: EPA-HQ-OAR-2013-0685	This action will finalize a rule to clarify the term "adjacent" in the definition of: "building, structure, facility or installation" used to determine the "stationary source" for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs and "major source" in the title V program as applied to the oil and gas natural sector.	6/2016 for Final Rule
Hydraulic Fracturing Chemicals and Mixtures Docket ID: EPA-HQ-OPPT-2011-1019	In response to a petition in 2014 EPA plans to issue a proposed rule requiring reporting of chemicals used in hydraulic fracturing under the Toxic Substances Control Act (TSCA).	12/2016 for NPRM
Effluent Guidelines and Standards for Oil and Gas Extraction Point Source Category Docket ID: EPA-OW-2014-0598	This action will finalize a rule establishing technology-based pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly owned treatment works from existing and new unconventional oil and natural gas extraction facilities.	8/2016 for Final Rule
Modernization of the Accidental Release Prevention Regulations under Clean Air Act Docket ID: EPA-HQ-OEM-2015-0725	This action will finalize a rule to EPA's Risk Management Program requiring additional analysis of safer technology and alternatives, third-party audits, incident investigation root cause ana-lysis and increased public availability of chemical hazard information	12/2016 for Final Rule
National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions [No Docket ID yet]	In 2007 promulgated a set of short-term regulatory revisions and clarifications to the Lead and Copper Rule and identified addtional regulatory changes to be considered as part of the more comprehensive changes to the rule that is expected to be included in the upcoming proposed rule.	12/2016 for NPRM

Rule	Description	Projected Date
Formaldehyde Emission Standards for Composite Wood Products Docket ID: EPA-HQ-OPPT-2012-0018	This action will finalize a rule under TSCA setting formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufact-ured (including imported) in the United States.	5/2016 for Final Rule
Financial Responsibility Requirements under CERCLA Section 108(b) for Classes of Facilities in the Hard Rock Mining Industry Docket ID: EPA-HQ-SFUND-2009-0265	EPA is expected to propose a rule under the Comprehensive Environmental, Response, Compensation and Liability Act (CERCLA) Section 108(b) requiring facilities in the Hard Rock mining industry to demonstrate financial ability to respond to future releases of hazardous waste.	12/2016 for NPRM
Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium-and Heavy-Duty Engines and Vehicles Phase 2 Docket ID: EPA-HQOAR-2014-0827-1760	This action will finalize a joint EPA and Department of Transportation rule setting greenhouse gas emission and fuel efficiency standards for model years beyond 2018 for medium-and heavy-duty trucks.	8/2016 for Final Rule
Model Trading Rules for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014 Docket ID: EPA-HQ-OAR-2015-0199	This action will finalize EPA's model rules to implement as the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (i.e. the Clean Power Plan) that EPA promulgated on 8/3/15.	8/2016 for Final Rule
Proposed Greenhouse Gas Endangerment and Cause or Contribute Findings Under CAA Section 231 for Aircraft, and ANPRM on the Internat-ional Process for Reducing Aircraft GHGs and Future Standards Docket ID:EPA-HQ-OAR-2014-0828	This action will finalize a EPA's determination on whether aircraft greenhouse (GHG) emissions cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare.	7/2016 for Final Rule

Rule	Description	Projected Date
Revisions to the Prevention of Significant Deterioration and Title V Greenhouse Gas (GHG) Permitting regulat-ions and Establishment of a GHG Significant Emissions Rate. Docket ID: EPA-HQ-OAR-2015-0355	EPA is expected to issue a proposed rule that will establish a threshold level below which Best Available Control Technology (BACT) is not required for a source's GHG emissions.	10/2016 for NPRM
Expansion of Industry Sec-tors Covered by the Toxic Release Inventory (TRI), Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 [No Docket ID yet]	EPA is expected to propose a rule expanding the scope of industry sectors covered by Emergency Planning and Community Right-to-Know Act (EPCRA) section 313, also known as the Toxics Release Inventory (TRI).	12/2016 for NPRM
Interstate Transport Rule for the 2008 Ozone NAAQS Docket ID: EPA-HQ-OAR -2015-0500	This action will finalize EPA's proposal regulating the transport of ozone across state boundaries.	9/2016 for Final Rule
Implementation of the 2015 NAAQS for Ozone: Nonatt-ainment Area Classifications and State Implementation Plan Requirements [No Docket ID yet]	EPA is expected to proposed a rule to address implementation requirements for the 2015 National Ambient Air Quality Standards (NAAQS) for ozone, including the nonattain-ment area classification system, and the timing of State Implementation Plan submissions.	10/2016 for NPRM
Fine Particulate Matter NAAQS: State Implement-ation Plan Requirements Docket ID: EPA-HQ-OAR-2013-0691	This action will finalize implementation requirements for particulate matter (PM2.5) NAAQS including the timing of plan submi-ssions, attainment deadlines for areas des-ignated nonattainment, policies for addressing PM2.5 precursor pollutants, and other measures.	10/2016 for Final Rule
Addition of Subsurface Component to Hazard Ranking System Docket ID: EPA-HQ-SFUND-2010-1086	This action will finalize a new screening component to CERCLA's Hazard Ranking System that would allow sites with vapor intrusion contamination to be evaluated for placement on the National Priorities List.	12/2016 for Final Rule
Hazardous Waste Export - Import Revisions Rule Docket ID: EPA-HQ-RCRA-2015-0147	This action will finalize a final rule to revise the hazardous waste export-import related requirements to streamline export shipments subject to the Resource Conservation and Recovery Act (RCRA).	12/2016 for Final Rule

Rule	Description	Projected Date
Municipal Separate Storm General Permit remand Rule Docket ID: EPA-HQ-OW-2015-0671	This action will finalize a rule for municipal separate sewer system National Pollutant Discharge Elimin-ation System (NPDES) permits to address a U.S.	11/2016 for Final Rule
N-Methylpyrrolidone (NMP) and Methylene Chloride -TSCA Section 6(a) [No Docket ID yet]	EPA identified commercial and consumer paint and varnish stripping uses of n-methylpyrrolid-one and methylene chloride for risk evaluation and is initiating a rule under the Toxic Substan-ces Control Act (TSCA) to address these risks.	10/2016 for NPRM
Nanoscale Materials; Chem-ical Substances When Manu-factured, Imported, or Proce-ssed as Nanoscale Materials; Reporting and Record-keeping Requirements Docket ID:EPA-HQ-OPPT -2010-0572	This action will finalize a final rule to require reporting and recordkeeping requirements under TSCA for certain chemical substances when they are manufactured or processed at the nanoscale.	10/2016 for Final Rule
National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart W: Stand-ards for Radon Emissions From Operating Uranium Mill Tailings: Review Docket ID: EPA-HQ-OAR-2008-0218	This action will finalize National Emissions Standards for Hazardous Air Pollutants (NESHAP) requirements for radon emissions from operating uranium mill tailings.	8/2016 for Final Rule
National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works Risk and Technology Review [No Docket ID yet]	EPA is expected to propose updated NESHAPs for emissions from wastewaters that are treated at a Publically Owned Treatment Works.	12/2016 for NPRM
Pesticides; Certification of Pesticide Applicators Docket ID:EPA-HQ-OPP-2011-0183	This action will finalize a final rule to revise the federal regulations to improve the training and awareness of pesticide applicators.	11/2016 for Final Rule
Polychlorinated Biphenyls (PCBs); Reassessment of Use Authorizations Docket ID: EPA-HQ-OPPT-2009-075	The EPA's regulations governing the use of Polychlorinated Biphenyls (PCBs) in electrical equipment and other applications have not been updated since 1998. EPA is expected to propose updated regulations governing the use, distribution in commerce, marking and storage for reuse of liquid PCBs in electric equipment and improvements to the existing use authorization for natural gas pipelines	6/2016 for NPRM

Rule	Description	Projected Date
Proposed Renewable Fuel Volume Standards for 2017 and Biomass Based Diesel Volume (BBD) for 2018 [No Docket ID yet]	The Clean Air Act requires EPA to issue rules that specify the annual volume requirements cellulosic biofuel, biomass based diesel (BBD), advanced biofuel, and total renewable fuel under the Renewable Fuel Standard program. EPA is expected to propose the applicable volumes for all renewable fuel categories for 2017, and the BBD standard for 2018.	6/2016 for NPRM
Reconsideration of the Polyvinyl Chloride and Copolymers National Emission Standards for Hazardous Air Pollutants [No Docket ID yet]	In response to four petitions EPA is expected to propose a rule reconsidering the 2012 final Polyvinyl Chloride and Copolymers NESHAPS rule to address Maximum Achievable Control Technology (MACT) and Generally Available Control Technology (GACT) issues.	8/2016 for NPRM
Renewables Enhancement and Growth Support Rule [No Docket ID yet]	EPA is expected to propose numerous changes to promote the production of renewable fuels allowing for partially converted feedstocks, adding new registration, recordkeeping, and reporting requirements for certain renewable fuel production facilities using carbon capture and storage, setting fuel quality specifications for certain ethanol blends, and providing additional flexibility for ethanol flex fuel producers.	8/2016 for NPRM
Review of the National Ambient Air Quality Standards for Lead Docket ID: EPA-HQ-OAR-2010-0108	This action will finalize an updated review of NAAQS for lead to provide increased protection for public health and welfare.	9/2016 for Final Rule
Revision of 40 CFR Part 192--Health and Environmental Protection Standards for Uranium and Thorium Mill Tailings and Uranium In Situ Leaching Processing Facilities Docket ID: EPA-HQ-OAR-2012-0788	This action will finalize standards for the protection of public health, safety, and the environment from radiological and non-radiological hazards associated with uranium ore processing and disposal of resulting waste materials.	12/2016 for Final Rule
Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements Docket ID: EPA-HQ-OPA-2006-0090	This action will finalize revisions to Subpart J (related to materials used in oil spills) of the National Contingency Plan to address the efficacy, toxicity, and environmental monitoring of dispersants, other chemical and biological agents, and other spill mitigating substances.	12/2016 for Final Rule

Rule	Description	Projected Date
Trichloroethylene (TCE); Rule-making Under TSCA Section 6(a) [No Docket ID yet]	EPA is expected to propose a rule under TSCA to address the risks posed by TCE when used as a spotting agent in dry cleaning and in commercial and consumer aerosol spray degreasers.	8/2016 for NPRM
Trichloroethylene (TCE); Rule-making Under TSCA Section 6(a); Vapor Degreasing [No Docket ID yet]	EPA is expected to propose a rule under TSCA to address risks associated with commercial vapor degreasing.	11/2016 for NPRM
Uniform National Discharge Standards for Vessels of the Armed Forces - Phase II - Batch Two (UNDS) [No Docket ID yet]	EPA is expected to propose a rule to create under CWA Section 312(n), "Uniform National Discharge Standards for Vessels of the Armed Forces. EPA and Department of Defense (DoD) jointly promulgated regulations in 1999, and proposed standards to control additional discharges in 2014. This summer EPA and DoD are expected to propose another rule covering certain additional discharges.	7/2016 for NPRM
User Fee Schedule for Electronic Hazardous Waste Manifest Docket ID: EPA-HQ-RCRA-2001-003	EPA is expected to propose a rule setting an e-Manifest User Fee Schedule.	5/2016 for NPRM

Information from EPA's Regulatory Development and Retrospective Review Tracker https://yosemite.epa.gov/opei/RuleGate.nsf/

AUTHORS

Cliff Rothenstein
Government Affairs Advisor
+1.202.778.9381
cliff.rothenstein@klgates.com

Kathleen Nicholas
Government Affairs Coordinator
+1.202.778.9287
kathleen.nicholas@klgates.com

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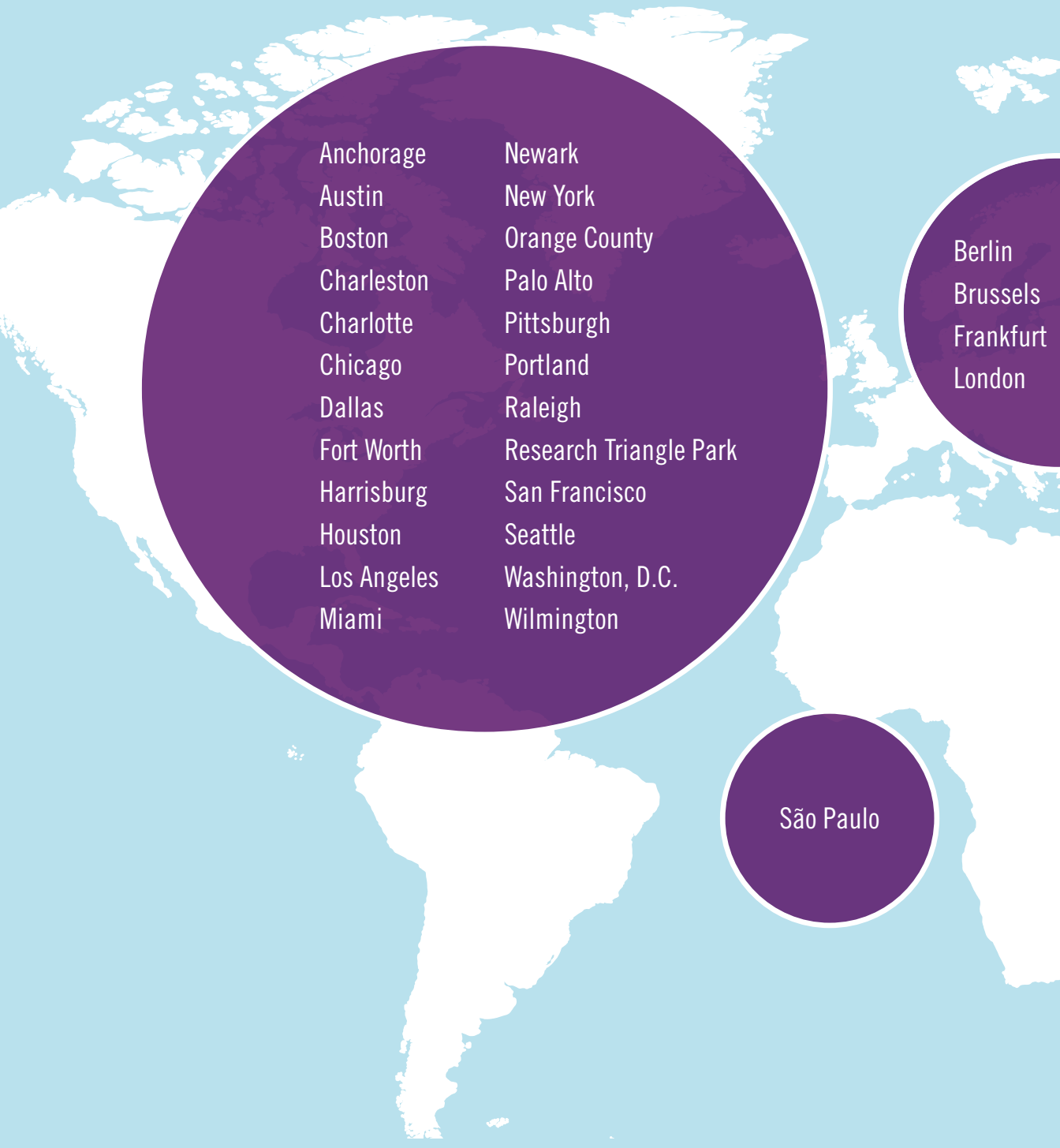

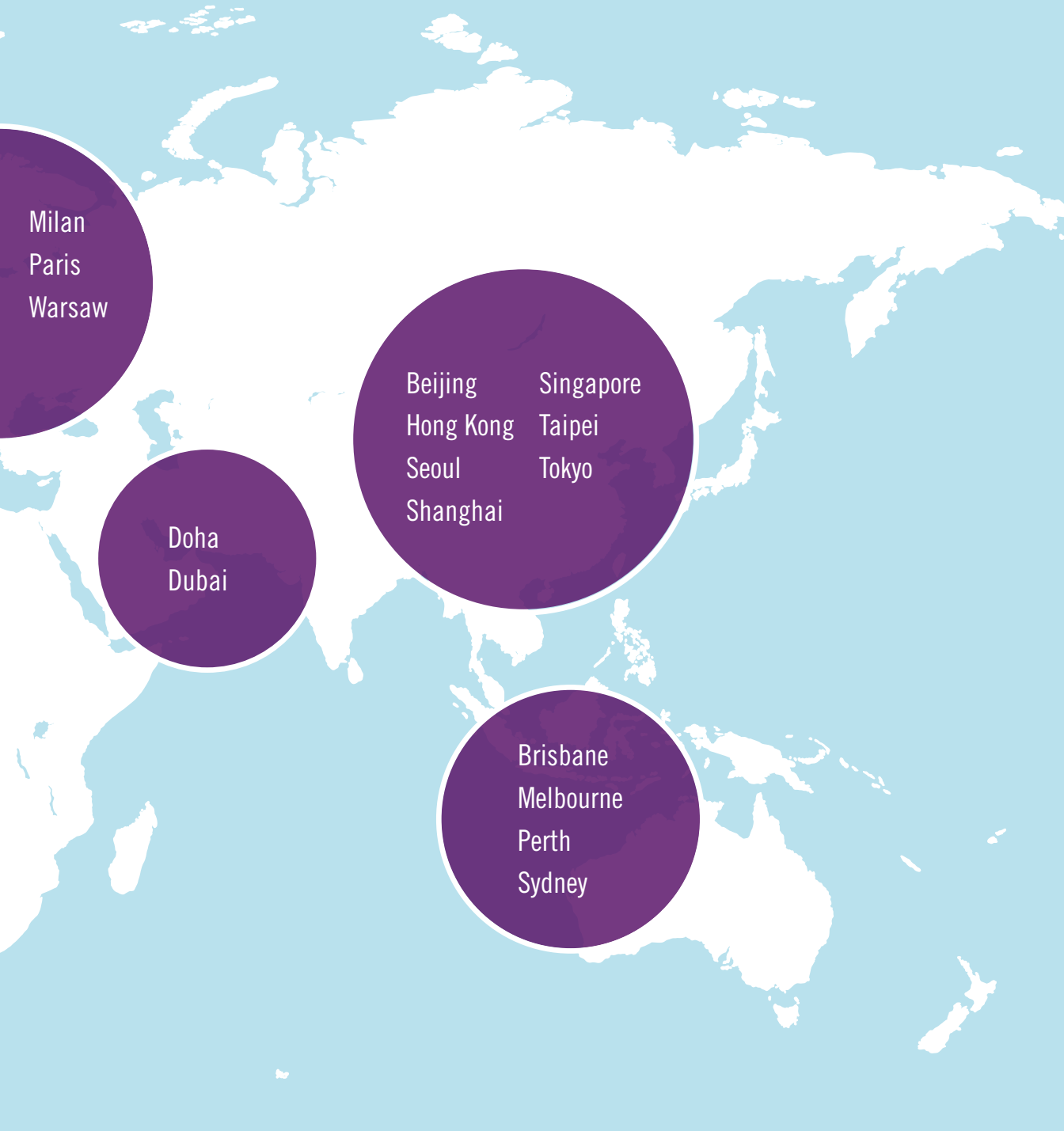
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