

Environment & Energy Insights

April 2025 Edition

Welcome to the April edition of Nutter's Environment & Energy Insights, a periodic update of current trends in environment and energy law. This month we cover:

- **EPA is changing Clean Water Act jurisdiction over wetlands;**
- **MassDEP issues updated guidance on Activity and Use Limitations; and**
- **EPA outlines future PFAS actions.**

EPA is changing the meaning of "waters of the United States." Again.

The Environmental Protection Agency (EPA) recently announced that it would engage in a series of public sessions on the meaning of "waters of the United States," which determines which waterbodies are subject to federal jurisdiction under the Clean Water Act. The Supreme Court defined the current test in its May 2023 *Sackett* decision. In brief, a wetland is jurisdictional under *Sackett* if it is (i) adjacent to a jurisdictional waterbody and (ii) the wetland has a "continuous surface connection" with that waterbody such that it is difficult to determine where the jurisdictional waterbody ends and the wetland begins. (Click for [our summary of Sackett](#)).

In response to *Sackett*, the EPA and U.S. Army Corps of Engineers under the Biden Administration revised its regulations defining jurisdictional waters in August 2023. (Click for [our summary](#)). Notably, the regulations assert jurisdiction over any wetland with a "continuous surface connection" to a covered water, even if there is no geographical proximity between the wetland and covered water.

Conservative advocacy groups have criticized the Biden Administration's rule as being too broad under *Sackett*, and many (including [us](#)) have expected the Trump Administration to change the rule. EPA is likely to do that. According to a March 2025 "[Memorandum to the Field](#)" between the Army, the Army Corps, and EPA, the current rule "did not include adequate direction or guidance on the meaning of the 'continuous surface connection' requirement," and implementing guidance "contain conclusions which are inconsistent" with the requirement under *Sackett*.

EPA has scheduled listening sessions for specific stakeholders through May 6, 2025, with a session for the public to follow. EPA received over 1,280 written comments on the rule during the comment period, which closed on April 23. We expect EPA will announce its draft revised rule later this year.

MassDEP issues guidance on implementing Activity and Use Limitations.

On April 23, 2025, the Massachusetts Department of Environmental Protection issued its updated [guidance](#) regarding Activity and Use Limitations (AUL). AULs are a common tool in Massachusetts used to limit exposures at hazardous waste sites to residual contamination. AULs provide notice following recording in a property's title of allowed and prohibited uses and other obligations required to maintain a Condition of No Significant Risk pursuant to the Massachusetts Contingency Plan.

The guidance provides key information regarding the form, required exhibits, and signature authority to help property owners and environmental professionals avoid common pitfalls when preparing an AUL.

EPA will still regulate PFAS.

On April 28, 2025, EPA issued a [press release](#) outlining upcoming actions to address Per- and Polyfluoroalkyl Substances (PFAS). While recent actions at EPA have been aimed at reducing regulations, EPA reaffirmed its intent to address PFAS, including designation of an agency lead for PFAS, the creation of effluent limitations guidelines for certain PFAS compounds, and leading an effort to establish a clear liability structure that "ensures the polluter pays and passive receivers are protected." Many details remain to be seen, but initial indications are that there may not be many changes to EPA's ongoing approach to PFAS.

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