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Beat the AI Clock: Federal Initiatives to Accelerate Data Center Environmental Permitting and Brownfield Opportunities

BY HENRY R. "SPEAKER" POLLARD, V

As the United States seeks to maintain primacy in data processing and artificial intelligence, the Trump Administration is taking steps to reduce the regulatory burdens for development of data centers necessary to sustain this dominance. Perhaps chief among these is President Trump's Executive Order 14318 issued on July 23, 2025, and titled "Accelerating Federal Permitting of Data Center Infrastructure" (E.O. 14318). E.O. 14318 directs federal agencies, including the Environmental Protection Agency (EPA), to explore and drive opportunities to reduce regulatory permitting and other hurdles for data centers and their component supply chains. E.O. 14318 applies to "Qualifying Projects," which include certain large scale or nationally strategic "Data Center Projects" or "Covered Component Projects," encapsulating much of the parts and supply chain and energy needs for large data centers.

Under E.O. 14318, federal departments and agencies must pursue several key environmental regulatory, permitting and policy actions:

1. **NEPA Process Exemption Coordination.**
   Federal environmental agencies must identify existing categorical exclusions from the National Environmental Policy Act (NEPA) review process, and "the Council on Environmental Quality shall coordinate with relevant agencies on the establishment of new categorical exclusions to cover actions related to Qualifying Projects that normally do not have a significant effect on the human environment." E.O. 14318 also expressly applies other NEPA exceptions for Qualifying Projects based on lack of "substantial Federal control and responsibility" for Qualifying Project funding, including where federal funding comprises less than half of the Qualify Project's capital investment.

2. **Expediting Environmental Permitting and Exemptions.**
   EPA must "assist in expediting permitting on Federal and non-Federal lands by developing or modifying regulations promulgated under" various federal environmental laws affecting development of Qualifying Projects. In addition, the Secretary of the Army must consider whether "any activity-specific nationwide permit" under Clean Water Act § 404 (for impacts to "waters of the United States") and Section 10 of Rivers and Harbors Appropriation Act of 1899 (for impacts to traditionally navigable waters) is appropriate "to facilitate the efficient permitting of activities related to Qualifying Projects." E.O. 14318 also requires federal agency consultation

under the Endangered Species Act "on a programmatic level" for "common construction activities for Qualifying Projects to occur over the next 10 years" on federal lands.

3. **Brownfield and Superfund Site Reuse.** EPA must "expeditiously identify Brownfield Sites and Superfund Sites for use by Qualifying Projects." To that end, within 180 days of issuance of E.O. 14318, EPA "shall develop guidance to help expedite environmental reviews for qualified reuse" and to guide states and private parties to make use of brownfield and Superfund sites for Qualifying Projects. EPA has more recently announced it is working on this guidance, focusing on criteria for brownfield site selection for reuse for Qualified Projects, rather than specifying particular properties for such development. That guidance may prove pivotal for encouraging data center development at contaminated sites.

While the federal push is on, some states and localities are feeling energy supply or political pressures (or both), which could temper development in certain locations. In Virginia, the nation's largest data center, there is increasing scrutiny over the shortage of energy generation and transmission capacity and how to allocate these resources to serve data centers while meeting a host of other industrial, commercial, and residential demands. Data center development and its tie to energy policy is expected to be a substantial consideration in the coming 2026 General Assembly and with the incoming Spanberger administration in the Governor's Office. Meanwhile, some localities are becoming more cautious about data center development as a land use, based often on perceptions of noisy operations, air pollution, energy demand affecting local grid capacity, and water supply.

As data centers are expected to proliferate across the country, the degree to which state and local policies align with or constrain the federal drive to facilitate data center development remains to be seen. State environmental and energy regulatory and land use policies that materially conflict with federal efforts to streamline data center development would only complicate an already complex effort to sustain America's data center and AI dominance. Accordingly, and also challenging, proper balancing of these interests will be imperative for all stakeholders.

Executive Order 14318, "Accelerating Federal Permitting of Data Center Infrastructure" (July 23, 2025);

United States Environmental Protection Agency, "ICYMI: Administrator Zeldin in The Hill: EPA Has a Huge Role in American AI Dominance" (September 17, 2025);

"EPA's Brownfields Office Advancing Criteria To Locate AI Data Centers," InsideEPA.com's Daily Briefing, 2025 WLNR 29929996 (November 13, 2025)

Freedom of Information Request Reveals EPA Plan to Rollback ELGs Affecting Electroplating, Electronic Manufacturing and Asbestos Industries

BY: WILLIAM D. "BILL" KURIGER

Recent documents obtained through an environmentalist nonprofit group's Freedom of Information Act request reveal EPA's intent to review and rollback effluent limitation guidelines (ELGs) for asbestos manufacturing, electrical and electronic component manufacturing

(E&EC), and electroplating industries. ELGs are national standards promulgated under EPA's Clean Water Act authority, which set technology-based limits on discharge of pollutants by industrial category.

Early in his term, President Trump directed agencies by executive order to identify regulations not aligning with the administration's policy goals. EPA developed a "Unified Agenda" identifying twenty-six regulations for review. In response to the executive order, EPA submitted these regulations and nine additional previously unlisted regulations, including the ELGs identified above, to the White House Office of Management and Budget for review. Other unlisted items submitted for review include regulation of trichloroethylene (TCE) under the Toxic Substances Control Act, national emissions standards for hazardous air pollutants (HAPs) from fossil fuel steam generating units, greenhouse gas emissions standards for certain heavy-duty vehicles, and multi-pollutant emissions standard for light- and medium-duty vehicles. On request, EPA commented the ELGs were identified in long-term regulatory planning documents preceding the Unified Agenda.

EPA states generally the ELGs "imposed undue burden on small business and impeded private enterprise," but the rationale for each ELG review is distinct. For E&EC, deregulation directly supports the President's goal to enhance semiconductor manufacturing in the United States by loosening environmental restrictions. EPA stated in the Unified Agenda, the ELG for asbestos manufacturing is unnecessary as asbestos is no longer made in the United States. Like E&EC, the potential rollback of the electroplating ELG likely is intended to ease burdens on manufacturers to enhance productivity.

One important note for electroplaters is EPA still intends to address PFAS in the chromium electroplating industry. However, given the newly-discovered ELG review and recent EPA studies concluding chromium electroplating is the "predominant source[]" of PFAS in the metal plating and electroplating source categories, it appears less likely EPA will regulate PFAS broadly in the electroplating ELG, opting instead for targeted regulation of chromium processes. Affected regulations include 40 CFR Pts. 413, 427 and 469.

Agencies Propose Latest Revision of Clean Water Act "Waters of the United States" Definition

BY: TANNER N. BRANTLEY

EPA and the U.S. Army Corps of Engineers (USACE) recently proposed revisions to regulations defining the scope of waters covered under the Clean Water Act (CWA). For over 50 years, CWA regulations have been the subject of extensive rulemaking and litigation, primarily due to the contentious history surrounding the definition of "waters of the United States" (WOTUS). Following the 2023 Supreme Court decision in *Sackett v. Environmental Protection Agency*, which narrowed the scope of federal jurisdiction under the CWA, the agencies proposed further revisions to the CWA regulations.[1] These revisions aim to provide clarity, simplicity, consistency, and longstanding improvements to the regulatory program (the "Proposed Rule"). The comment period for this proposed rulemaking closed January 5, 2026.[2]

Proposed Changes

The Proposed Rule represents the agencies' latest effort to address the complex history associated with the WOTUS definition and the CWA regulations. Under the agencies' recently proposed rule, the term "waters of the United States" would include: (1) traditional navigable waters and the territorial seas; (2) most impoundments of "waters of the United States;" (3) relatively permanent tributaries of traditional navigable waters, the territorial seas, and impoundments; (4) wetlands adjacent (i.e., having a continuous surface connection) to traditional navigable waters, impoundments, and tributaries; and (5) lakes and ponds that are relatively permanent and have a continuous surface connection to a traditional navigable water, the territorial seas, or a tributary.

The Proposed Rule includes the following notable revisions to the CWA regulations:

- Removal of the interstate waters category from the definition of "waters of the United States."
- Removal of "intrastate" from the paragraph (a)(5) category for lakes and ponds that are not identified in paragraph (a)(1) through (a)(4) that are relatively permanent, standing or continuously flowing bodies of water with a continuous surface connection to the waters identified in paragraph (a)(1) or (a)(3) of that section.
- Amendment of the exclusions for waste treatment systems, prior converted cropland, and certain ditches.
- Addition of an exclusion for groundwater.
- Addition of the definitions for the following:
  - "continuous surface connection"
  - "ditch"
  - "prior converted cropland"
  - "relatively permanent"
  - "tributary"
  - "waste treatment system"

Impacts on Virginia

Although the Proposed Rule would redefine federal jurisdiction under the WOTUS, it is important to note Virginia maintains its own jurisdiction over state waters, including wetlands. Many water bodies throughout the state remain subject to this jurisdiction due to Virginia's expansive definition of "state waters" and its comprehensive regulatory framework. Under the Virginia State Water Control Law (SWCL), "state waters" are defined as "all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands." [3] While the SWCL does not define surface water, the State Water Control Board (SWCB) has defined surface water as "all state waters that are not groundwater as groundwater is defined in § 62.1-255 of the Code of Virginia." [4]

As a result, state waters in Virginia will continue to be subject to state-level regulations, including permitting and mitigation for impacts that fall under the Virginia Water Protection Permit Program.

Looking Forward

Despite Virginia's comprehensive regulatory framework for state waters, regulated parties should carefully consider implications of the Proposed Rule on CWA § 404 permitting, CWA § 402 NPDES discharges and permitting, CWA release reporting and response, and the extent of Total Maximum Daily Load requirements, Oil Pollution Act and Spill Prevention, Control, and Countermeasure/ Facility Response Plan coverage. Furthermore, it is important to thoroughly assess the potential impacts on federal funding for current or pending projects involving waters that would no longer be classified as WOTUS. Stakeholders must remain informed and engaged to ensure project compliance and to effectively manage and protect water resources for the future.

1. *Sackett v. EPA*, 598 U.S. 651, 143 S. Ct. 1322 (2023).

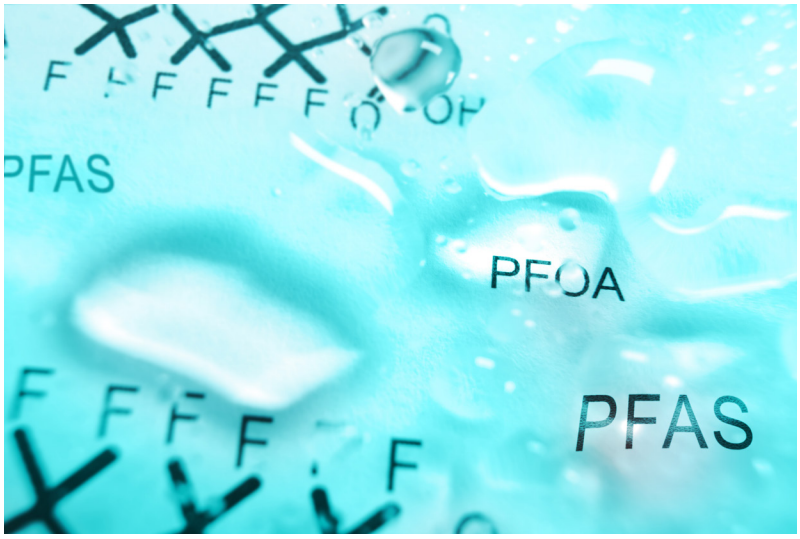
2. 90 FR 52498.

3. Va. Code Ann. § 62.1-44.3. *See also*, 9 Va. Admin. Code § 25-210-10.

4. 9 Va. Admin. Code § 25-210-10.

EPA Proposes Broad PFAS Reporting Exemptions Under TSCA, While Shortening Reporting Window

BY: RYAN W. TRAIL



EPA recently issued a proposed rulemaking, **here**, which would significantly modify 2023 PFAS reporting regulations under TSCA Section 8(a)(7), introducing several industry-requested exemptions and narrowing who must report. The proposed rule is a major shift from the Biden-era rule, which industry widely criticized as overly burdensome and costly. The 2023 rule, mandated by the FY20 National Defense Authorization Act, requires manufacturers (including importers) to report extensive information on PFAS manufactured or used since 2011, including volumes, uses, exposures, byproducts, and hazards. Implementation has already been delayed twice, and the new proposal would further reshape the upcoming reporting period.

The proposed revisions include multiple exemptions aligned with longstanding TSCA Chemical Data Reporting (CDR) categories. EPA proposes exempting PFAS present in mixtures or products at concentrations at or below 0.1%, imported articles, byproducts, impurities, non-isolated intermediates, and chemicals manufactured solely for research and development purposes. EPA explains these activities reflect situations where manufacturers are "least likely to know or reasonably determine" whether PFAS was present, and that recordkeeping practices during the 2011–2022 lookback period would make identifying PFAS below 0.1% impracticable.

Although most of the proposed revisions would reduce regulatory burden, EPA is also shortening the window for reporting. Currently, a six-month reporting period is scheduled to begin April 13, 2026. However, the new proposal would require companies to submit reports during a three-month period beginning 60 days after the final rule's effective date. EPA argues because businesses have been aware of the PFAS rule since 2023, they have had sufficient time to prepare compliance strategies, particularly in light of the newly narrowed reporting scope. The compressed reporting window may still pose challenges for companies with complex supply chains or uncertain PFAS data, even as the overall reporting burden decreases.

EPA accepted public comments on the proposed rule until December 29, 2025. Companies manufacturing, importing, or using PFAS (especially those unsure if their products contain PFAS at trace levels) should evaluate whether the proposed exemptions would alter their reporting obligations and consider submitting comments. Although the timing of the final rule remains uncertain, the agency's proposal signals a notable recalibration of TSCA PFAS reporting, balancing data-collection objectives with long-standing industry concerns over feasibility and cost.

Contact Us: We find ways to help you move forward.

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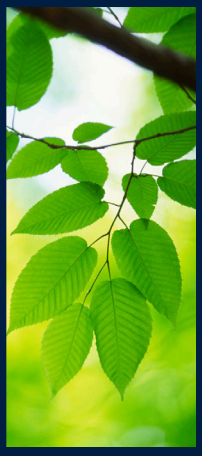

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