

# FLOOD & STORMWATER MANAGEMENT UPDATE



## NAFSMA Submits Comments on Waters of the US Rule

NAFSMA on April 10, 2019, submitted comments on the Administration's proposed rule of February 14, 2019, to clarify the definition of Waters of the United States (WOTUS). NAFSMA leaders thank all who helped develop the association's set of comprehensive comments.

As part of NAFSMA's opening comments, support was expressed for the effort by the Administration to clarify the definition of WOTUS.

In addition to commenting on provisions included in the proposed rule, NAFSMA also raised the need for the U.S. Army Corps of Engineers and the Environmental Protection Agency to clarify the existing exemption for maintenance activities for flood control systems.



The association's comments noted that Clean Water Act §404(f)(1)(B) identifies certain maintenance activities as non-prohibited discharges of dredged or fill material. However, federal agency field offices have inconsistently interpreted this provision of the Clean Water Act. NAFSMA requests that the proposed rule clarify Congress intended for §404(f)(1)(B) to include routine maintenance of channels, including removal of debris and trash, and vegetation management.

NAFSMA also requested that Clean Water Act §404(f)(2), often referred to as the "recapture clause," be clarified to state that it does not apply to routine maintenance activities for flood control systems.

You can access NAFSMA's comments under latest news at [www.nafsma.org](http://www.nafsma.org).

A number of NAFSMA member agencies have shared their comments with the national office. If your agency or firm filed individual comments on the proposed WOTUS rulemaking, please send them to the national office to the attention of [sgilson@nafsma.org](mailto:sgilson@nafsma.org). ■

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## Senate Legislation Introduced to Improve Water Quality Certifications

Senator John Barrasso (R-WY), chairman of the Senate Committee on Environment and Public Works, on April 9, 2019, reintroduced legislation amending Section 401 of the Clean Water Act to improve the process for water quality certifications. [S. 1087, the Water Quality Certification Improvement Act](#), was cosponsored by a number of other majority Senators including Sens. Steve Daines (R-VT), James Inhofe (R-OK), Shelly Moore Capito (R-WV), Mike Enzi (R-WY) and Kevin Cramer (R-ND).

When introducing the bill, Chairman Barrasso stated, “The water quality certification process is being abused in order to delay important energy projects.” He also indicated that this legislation would ensure that “the water quality certification process is used only to protect America’s water, not further political agendas.”

According to the Committee’s press release on the bill, S. 1087 would do the following:

- Clarify that the scope of a section 401 review is limited to water quality impacts only;
- Clarify that States, when evaluating water quality can only consider discharges that would result from the federally permitted or licensed activity itself – not from other sources;
- Require States to publish clear requirements for water quality certification requests;
- Require States to make final decisions on whether to grant or deny a request in writing based only on water quality reasons; and
- Require States to inform a project applicant within 90 days whether the states have all of the materials needed to process a certification request.

Sen. Barrasso had introduced the same bill last year in the 115<sup>th</sup> Congress (S. 3033) and the Senate Environment and Public Works Committee held hearings on the legislation and related issues last August.

## President Trump Issues Executive Order Addressing Section 401 Water Quality Certifications

As part of **Executive Order 13868 – Promoting Energy Infrastructure and Economic Growth**, the President on April 10th also took on the issue of Water Quality Certifications called for under Section 401 of the Clean Water Act under Section 3 of the Executive Order (EO).

The new EO, which was published in the Federal Register on April 15, 2019, calls for the EPA Administrator to consult with States, tribes and relevant executive departments and agencies to determine whether any provisions in regulations or guidance need to be clarified to be consistent with Section 2 of the EO.

Section 2 EO 13868 states that it is the policy of the United States to promote private investment in the Nation’s energy structure through:

- Efficient permitting process and procedures that employ a single point of accountability, avoid duplicative and redundant studies and reviews, and establish clear and reasonable timetables;
- Regulations that reflect best practices and technologies;
- Timely action on infrastructure projects that advance America’s interests and ability to participate in global energy markets;
- Increased regulatory certainty regarding the development of energy infrastructure;
- Effective stewardship of America’s natural resources; and
- Support for American ingenuity, the free market and capitalism.

EPA has already begun its consultation effort with States and tribal entities, a process that according to the EO is to be completed within 90 days or June 10, 2019. As part of this effort, EPA is accepting pre-proposal recommendations prior to the forthcoming guidance and rulemaking process through June 10 at [www.regulations.gov](http://www.regulations.gov) – Docket ID No. EPA-HQ-OW-2018-0855.

## EPA Seeks Input on Water Reuse Plan



EPA's Office of Water on April 18<sup>th</sup> announced that is seeking public input on the development of an action plan to accelerate the application of water reuse as a safe, reliable, and sustainable way to meet the country's current and future water demands.

The agency has released a [Discussion Framework for Development of a Draft Water Reuse Action Plan](#) to facilitate public input on the action plan.

Included among the water reuse issues identified for comment are:

- Specific actions that can be taken now and in the future by federal agencies, States, tribes, local governments water utilities, industry, agriculture and others;
- Key relevant sources of information, such as literature, about water reuse not already identified in the Discussion Framework;
- Examples of water reuse, both past and future, which demonstrate opportunities and barriers; concepts for applying water reuse strategies within integrated water resources management planning, and;
- Ways water reuse can improve water resiliency, security and sustainability through a more diverse water portfolio

EPA will accept public input for the draft Water Reuse Action Plan through July 1, 2019, online via <https://www.regulations.gov> using Docket ID No. EPA-HQ-OW-2019-0174. After consideration of the input received, the agency plans to release a draft Water Reuse Action Plan for public comment in September.

## EPA Releases Guidance on CWA Permitting for Groundwater

On April 15<sup>th</sup>, EPA issued an Interpretive Statement concluding that Congress excluded releases of pollutants to groundwater from the Clean Water Act's permitting requirements and instead regulation of those releases to the States and other EPA statutory authorities. [The Interpretive Statement](#) was published in the Federal Register on April 23, 2019.

This issue of CWA regulation of pollutants through the National Pollutant Discharge Elimination System (NPDES) program into jurisdictional surface waters through groundwater has been central to the case in the 9<sup>th</sup> Circuit Court of appeals involving the *County of Maui, Hawaii v. Hawaii Wildlife Fund* that is slated to be heard by the U. S. Supreme Court this fall.

EPA requested public comment in February 2018 as to whether the agency should revise or clarify its position on this issue. NAFSMA submitted comments on the issue. Based on comments received and a review of prior agency statements on this matter, as well as a comprehensive analysis of the text, structure and legislative history of the CWA, EPA developed this new guidance.

The agency is soliciting additional comments on this Interpretive Statement for a 45-day period that ends on June 7, 2019. Comments can be submitted at [www.regulations.gov](http://www.regulations.gov) identified by Docket ID No. EPA-HQ-OW-2019-0166.

## Two Key Federal Agencies Now Have New Leaders in Place



The new Administrator for EPA, Andrew Wheeler, was formally sworn in as EPA Administrator on April 16<sup>th</sup>. Administrator Wheeler had been confirmed by the Senate for EPA's top post by the Senate on February 28 by a vote of 52-47. Prior to his confirmation, he had been serving as Acting Administrator since July when former Administrator Scott Pruitt resigned from the post.

At the Department of Interior, Secretary David Bernhardt was sworn into his new post on April 23<sup>rd</sup>. This action followed Senate confirmation on April 11th by a vote of 56-41. He had previously held the post of Deputy Secretary since August 2017.

## NAFSMA 2019 Awards Submissions Deadline is Just Around the Corner



Entries for NAFSMA's 2019 Excellence in Communications on Flood Risk Awareness and Water Quality as well as its Green Infrastructure in Stormwater Management Awards programs are due by May 15, 2019 (11:59 pm EDT). Online applications, as well as more detailed descriptions of the awards programs, are available at [www.nafsma.org](http://www.nafsma.org). All submissions are to be made electronically.

The Excellence in Communications Awards Program highlights award winning communication and outreach programs and provides examples of successful initiatives addressing flood awareness, pollution prevention and environmental protection that are taking place across the United States.

NAFSMA's awards programs, which are carried out under a mentoring agreement with FEMA, are open to all public agencies, and private firms working with a public agency, on communications efforts for flood risk or water quality or a

stormwater management green infrastructure project. NAFSMA members and non-members are invited to apply.

Once again, the deadline for 2019 submissions is 11:59 pm EDT on Wednesday, May 15<sup>th</sup>. Projects must be completed by May 1, 2019 to be considered.

This year's award winners will be announced at NAFSMA's 2019 Flood and Stormwater Management Conference on August 20-22, 2019, at Terranea, in Los Angeles, CA (Rancho Palos Verdes).

A video showcasing the 2018 award winners is available on the NAFSMA website as are photos of last year's outstanding awards and winners. A similar video will be prepared and made available for the 2019 award winners so get those applications ready. Don't miss this opportunity to highlight your community's unique and successful flood risk and water quality initiatives

For more information, contact Sofia Chatos at [schatos@nafsma.org](mailto:schatos@nafsma.org) or 301-404-1332. You can also contact Dusty Williams to discuss the Green Infrastructure awards program at [dustyw2015@gmail.com](mailto:dustyw2015@gmail.com) or (951) 313-0257 or Susan Gilson at the NAFSMA national office at [sgilson@nafsma.org](mailto:sgilson@nafsma.org) or 202-289-8625.

## NAFSMA Joins Mapping Coalition Asking that Mapping Funds Be Maintained



Analysis Program for fiscal year 2020.

NAFSMA was pleased to sign onto the broadly supported letter along with the following organizations: American Property Casualty Insurance Association, American Public Works Association,

tion, American Society of Civil Engineers, Association of State Floodplain Managers, Association of State Wetland Managers, Council of Insurance Agents and Brokers, Independent Insurance Agents & Brokers of America, National Apartment Association, National Association of Counties, National Association of Homebuilders, National Association of Realtors, National Flood Association, National League of Cities, National Multifamily Housing Council and National Society of Professional Surveyors.

A copy of the letter can be found under latest news at [www.nafsma.org](http://www.nafsma.org).

## Water Environment Federation MS4 Awards Programs Applications Due By May 10, 2019



The Water Environment Federation (WEF) is now accepting applications for the 2019 National Municipal Stormwater and Green Infrastructure Awards Program. Phase I and Phase II municipal separate storm sewer system (MS4) permit holders are invited to submit a nomination.

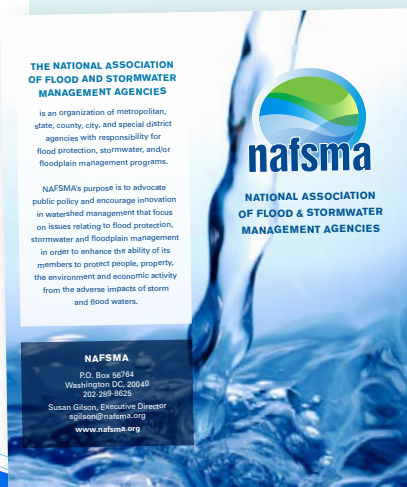
For more information, go to [www.wef.org/ms4awards](http://www.wef.org/ms4awards).

## NAFSMA 2019 Member-Get-A-Member Campaign Is Underway

As part of NAFSMA's 2019 membership development efforts, the association has launched a special member-get-a-member campaign to help grow the association's membership and to reward agencies who help the most with recruitment efforts. To help with this initiative, the NAFSMA leadership has approved **½ price membership for new members** joining the association in 2019. The rationale for this effort is that most new members exposed to NAFSMA benefits have become engaged and long-time members.

The 2019 membership application (attached) reflects this special reduction for 2019 new member dues only. In addition, the form provides a line for new members to identify the agency or firm contact who helped to recruit that new member. This is important since the agency or firm identified with the most new members will be able to choose whether to receive either a free registration or free hotel accommodations for the 2019 Annual Meeting.

**Don't miss this exciting opportunity to bring more of your colleagues into NAFSMA membership!**



## FEMA NFIP and Preparedness Announcements

### FEMA Enters Three-Year Reinsurance Agreement for National Flood Insurance Program

FEMA continues to engage reinsurance markets to strengthen the financial framework of the National Flood Insurance Program (NFIP) and promote private sector participation in flood-risk management.

On, April 16, 2019, FEMA entered into a three-year reinsurance agreement, effective April 17, 2019, with Hannover Re (Ireland) Designated Activity Company (DAC). Hannover Re acted as a transformer, transferring \$300 million of the NFIP's financial risk to capital markets investors by sponsoring the issuance of a catastrophe bond through a special purpose reinsurer.

This placement builds on the first transfer of NFIP flood risk to capital markets investors in August 2018, which transferred \$500 million in flood risk for three years. These capital market placements complement the NFIP's existing traditional reinsurance coverage, allowing FEMA to grow the NFIP Reinsurance Program that protects against future flood losses. Combined with the August 2018 capital market and January 2019 traditional reinsurance placements, ahead of the 2019 hurricane season, FEMA has transferred \$2.12 billion of the NFIP's flood risk to the private sector.



Congress granted FEMA authority to secure reinsurance from the private reinsurance and capital markets through the Biggert-Waters Flood Insurance Reform Act of 2012 and the Homeowner Flood Insurance Affordability Act of 2014.

For additional information about this traditional reinsurance placement, you can read Frequently Asked Questions (FAQs) and other details about this reinsurance placement, available at [www.fema.gov/nfip-reinsurance-program](http://www.fema.gov/nfip-reinsurance-program).

### Call for Risk, Capacity and Resilience Presenters at San Juan Event

The National Association of Schools of Public Affairs and Administration (NASPAA), the Office of the Mayor of San Juan, the University of Puerto Rico and the Inter-American University of Puerto Rico are hosting a conference on emergency management on June 3- 4, 2019 at the Carnegie Library in San Juan, Puerto Rico. Titled Risk, Capacity, and Resilience: Preparing the Next Generation of Public Service Leaders, this conference will convene elected officials, practitioners, and academics to discuss the current state and future of emergency management public service education.

NASPAA is seeking interested emergency management experts to present their work in the following areas:

- Vulnerable populations and resilience: equality and inclusion in emergency management;

- Growing dependence of society on technology and what happens when technology fails;
- Cross-sectoral and intergovernmental cooperation, including with the military;
- The need for interdisciplinary in the field of emergency management, including the fields of public administration, public health, economics, engineering, and others.

Interested presenters should send a note of interest, no longer than 300 words, including name and affiliation, topic of expertise, and proposed conference presentation title. All proposals should be sent by April 28, 2019 to [mbohrt@naspaa.org](mailto:mbohrt@naspaa.org).

## DHS Announces FY 2019 Preparedness Grants Funding Opportunities

The Department of Homeland Security on April 12, 2019, announced the release of [2019 Notices of Funding Opportunity for eight DHS preparedness grant programs](#).

These programs provide \$1.7 billion in funding to state, local, tribal, and territorial governments, as well as transportation authorities, nonprofit organizations, and the private sector, to improve the nation's readiness in preventing, protecting against, responding to, recovering from and mitigating terrorist attacks, major disasters and other emergencies. The grants reflect Department focus on funding for programs to address our Nation's immediate security needs and ensure public safety in our communities.

The FY 2019 grant guidance will continue to focus on the nation's highest risk areas, including urban areas that face the most significant threats. For FY 2019, the Urban Area Security Initiative (UASI) will enhance regional preparedness and capabilities by funding 31 high-threat, high-density urban areas.

Consistent with previous grant guidance, dedicated funding is provided for law enforcement and terrorism prevention throughout the country to prepare for, prevent and respond to pre-operational activity and other crimes that are precursors or indicators of terrorist activity.

Grant recipients are encouraged to use grant funding to maintain and sustain current critical core capabilities through investments in training and exercises, updates to current planning and procedures, and lifecycle replacement of equipment. New capabilities that are built using homeland security grant funding must be deployable if needed to support regional and national efforts. All capabilities being built or sustained must have a clear linkage to the core capabilities in the National Preparedness Goal.

All preparedness Notices of Funding Opportunities can be found at [www.grants.gov](http://www.grants.gov). Final submissions must be made through the [Non-Disaster \(ND\) Grants system](#). Further information on DHS's preparedness grant programs is available at [www.dhs.gov](http://www.dhs.gov) and [www.fema.gov/grants](http://www.fema.gov/grants).

### FEMA Webinar on Hurricane Readiness



Join FEMA on Wednesday, May 15 from 12:00–1:00 p.m. EDT for a webinar to learn about resources and activities that can help you and your community prepare for the 2019 hurricane season. Register [here](#).

### Important Dates

#### Wednesday, May 15, 2019 Midnight Eastern

Deadline for Submission of Entries for NAFSMA's 2019 Excellence in Communications and Stormwater Management Green Infrastructure Online Awards Submissions – Online applications are available at [www.nafsma.org](http://www.nafsma.org).

#### August 19 –22, 2019

NAFSMA 2019 Annual Flood and Stormwater Management Conference - Los Angeles (Rancho Palos Verdes), CA Online registration, preliminary agenda and hotel reservation link for Terranea available at [www.nafsma.org](http://www.nafsma.org)