

# WILLIAMS MULLEN ENVIRONMENTAL NOTES



## Recap from the Trenches: Reactions to EPA's 2023 Big Air Agenda

BY: LIZ WILLIAMSON

The first three quarters of 2023 have seen an unprecedented number of rulemakings under the Clean Air Act. The Biden administration has released a new suite of proposed rulemakings with a particular focus on climate change and air toxics. In our April [newsletter](#), we highlighted air rules to put on your watch list. Since then, air professionals have been hard at work digesting and commenting on the Biden administration's ambitious air agenda. Take a ticket aboard this adventure in the making. A review of the most impactful new air regulations and sleepers follows.

### Big Air Watch List

> **Reconsideration of the Particulate Matter (PM) National Ambient Air Quality Standard (NAAQS) (Forthcoming 2023 Final Rule):** At

the beginning of the year, EPA released a rule to lower the existing PM 2.5 NAAQS Annual Standard from  $12.0 \mu\text{g}/\text{m}^3$  (current) to either  $9.0 \mu\text{g}/\text{m}^3$  or  $10.0 \mu\text{g}/\text{m}^3$ . The comment period for the proposed rule ended on March 28, 2023. The final rule is presently at the Office of Management and Budget (OMB) and is expected to be released this fall.

- **Impacts and Reaction:** A lower PM 2.5 NAAQS standard will cause ambient modeling for permitting to be more challenging because background (baseline) ambient concentrations are close to the proposed new standards. The rule will impact all industry sectors. Since the proposed rule was released, parties developing new greenfield projects are looking at background PM 2.5 values at potential locations before committing to build. Site shopping may help potential permittees avoid modeling challenges and obtain air permits sooner.

- > **Good Neighbor Federal Implementation Plan (FIP) (2023: Final Rule released on March 15, 2023, ongoing implementation):** The Final Rule addresses summer NOx emissions. The Final Rule applies to twenty-three states to address their Good Neighbor obligations to eliminate significant contribution or interference with maintenance of the 2015 Ozone NAAQS in other states. The power sector and many industrial manufacturing sector categories are implicated. For the power sector, implementation is accomplished using the established Cross-State Air Pollution Rule (CSAPR) trading program. For certain industrial source categories, stationary sources must come into compliance by 2026. This rulemaking imposes dramatic NOx reductions during the ozone season for all sectors in affected states. EPA has not yet acted on the possibility of adding six more states (Arizona, Iowa, Kansas, New Mexico, Tennessee, and Wyoming) to the list of 23 upwind contributors to downwind attainment with the NAAQS in other states.
  - **Impacts and Reaction:** Strong, consistent opposition to the Good Neighbor FIP persists among many affected upwind states and industry groups. Implementation is in disarray due to litigation challenges, including appellate cases challenging EPA's ozone transport state implementation plan (SIP) disapprovals and direct challenges to the Good Neighbor FIP itself. The cumulative effect of the litigation is that 12 states have stays that prevent EPA from implementing the Good Neighbor FIP with respect to sources within their boundaries. On September 25, 2023, the D.C. Circuit declined to put in place a stay of the Good Neighbor FIP in *State of Utah v. EPA*. Consequently, there is no nationwide stay of the Good Neighbor FIP, but the 12 Disapproval state stays remain in effect. In a recent rulemaking, EPA expressed willingness to provide sources within stayed states additional time for Good Neighbor FIP compliance that sources would have had absent a stay, should the stay be lifted. Affected sources must continue to follow the myriad of judicial challenges as they shape their FIP compliance strategy.
- > **Power Sector Greenhouse Gas Rules (2023: Proposed Rule released, 2024 Final Rule):** EPA released five greenhouse gas rulemakings rolled into one momentous action – applying to new and existing electric generating units. The proposed rule is largely based on the application of carbon capture and sequestration (CCS) and low-greenhouse gas co-firing technologies, even though neither are yet fully developed. These measures would not take effect immediately but would need to be deployed in the 2030s. The portion of the rule aimed at coal-fired units is effectively a coal shutdown rule that uses sunset categories unless CCS is applied, even though CCS is not geologically available in many portions of the country. New baseload gas generation must co-fire with hydrogen or pursue CCS.
  - **Impacts and Reaction:** More than a million public comments were filed. Utilities and regional transmission organizations (RTOs) cited reliability concerns. The proposed rule is set to shut down a substantial number of fossil generation units, yet this dispatchable energy must be replaced. EPA appears to disagree with utilities and RTOs as to the magnitude of the energy crisis this rulemaking would create. The power sector views the proposed rule as legally indefensible – stepping beyond all reasonable boundaries set by the Clean Air Act. Comments contend that the major questions doctrine and the recent *West Virginia v. EPA* decision limits EPA's statutory authority to promulgate such expansive rules. Utilities currently are devising compliance strategies while maintaining options should the final rule be judicially struck. Concrete implementation plans are a challenge due to the unavailability of low-greenhouse gas hydrogen and infeasibility of CCS. All sectors should be watching this rulemaking due to its overall bearing on energy reliability.

## The 2023 Sleepers

In April, we identified one “sleeper:” The **Section 111(d) Implementation Rule (2023: Proposed / Final Rule expected)** will impact all industry sectors. It outlines the requirements for development of future

Section 111(d) rules. The proposed rule lays out a scheme that narrows the states' roles in Section 111(d) implementation, adds expansive public engagement requirements, and imposes tight timeframes for states to work through state plans with sources. States would also have a higher bar to use "remaining useful life" and "other factors" to demonstrate that a less stringent emissions guideline is appropriate for an individual source. The final rule is scheduled to be released this fall. EPA is behind its original schedule to issue the rule.

EPA's **Air Emissions Reporting Rule (AERR) (2023: Proposed / 2024: Final Rule expected)** is a proposed rule and a surprise newcomer to our watch list. On August 9, 2023, EPA published revisions that substantially modify the individual source and state requirements for emissions data reported to EPA. New annual hazardous air pollutants (HAPs) emissions reporting requirements for individual sources are the most visible change. The volume of data to be reported is extraordinary, especially for some small sources that may not have dedicated environmental staff or electronic emissions inventory systems. New mobile source reporting requirements may be difficult to implement. These new data are intended to be used to help EPA target new enforcement opportunities and protect vulnerable communities. This rule impacts all sectors.

### High Level Take-Aways

EPA has released an uncompromising regulatory "wish list" of proposals meant to ratchet down the use of fossil fuels, improve ambient air quality for criteria pollutants, identify air toxics for use in enforcement, and add public engagement opportunities all around. To-date, many states and affected sources have pushed back in public comments and in litigation for the FIP. EPA will consider whether to roll back the proposals or merely whittle away at the edges in the forthcoming final rules. Additional litigation is certain, regardless of EPA's approach. These rulemakings are relevant to all industries, but particularly the power sector and any energy-intensive manufacturing category reliant on consistent and affordable power. If the proposed rules are finalized as-is, energy reliability and cost concerns are likely to arise.

[Reconsideration of the National Ambient Air Quality Standards for Particulate Matter](#), **88 Fed. Reg. 5558 (Jan. 27, 2023)**

[The New Source Performance Standards for Greenhouse Gas Emissions From New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions From Existing Fossil Fuel-Fired Electric Generating Units](#), **88 Fed. Reg. 33240 (May 23, 2023)**

*West Virginia v. EPA*, **142 S.Ct. 2587, 2616 (2022)**

[Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards](#), **88 Fed. Reg. 36654 (June 5, 2023)**

[Air Plan Disapprovals; Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards](#), **88 Fed. Reg. 9336 (Feb. 13, 2023)**

Order issued Sept. 25, 2023, *State of Utah v. EPA*, No. 23-1157 (D.C. Cir.).

[Federal "Good Neighbor Plan" for the 2015 Ozone National Ambient Air Quality Standards; Response to Additional Judicial Stays of SIP Disapproval Action for Certain States](#), **88 Fed. Reg. 67102 (Sept. 29, 2023)**

[Adoption and Submittal of State Plans for Designated Facilities: Implementing Regulations Under Clean Air Act Section 111\(d\)](#), **87 Fed. Reg. 79176 (Dec. 23, 2022)**

[Revisions to the Air Emissions Reporting Requirements](#), **88 Fed. Reg. 54118 (Aug. 9, 2023)**

### North Carolina's Wetlands Saga is Over (for now)

**BY: SEAN M. SULLIVAN**

As a result of the North Carolina Farm Act of 2023 (Session Law 2023-63), North Carolina's Department of Environmental Quality (NCDEQ or the Department) may now only regulate wetlands that are subject to federal Clean Water Act jurisdiction. While developers will certainly appreciate the absence of a source of delays



and expense, only time will tell how the resulting losses of non-jurisdictional wetlands affect water quality.

Since the U.S. Supreme Court's 2001 decision in *SWANCC*, the Department has regulated wetlands primarily through its 401 certification program. In addition, NCDEQ had authority over "isolated wetlands," i.e., wetlands without a significant nexus to federally regulated waters under 15A NCAC 02H.1300. These programs effectively gave the Department authority over most wetlands in the state.

The Trump administration's 2020 Navigable Waters Protection Rule (NWPR) changed that dynamic. Because the NWPR withdrew federal jurisdiction over certain types of wetlands, NCDEQ would no longer need to issue a 401 certification for those impacts either. And, according to the Department, to the extent those non-jurisdictional wetlands did not meet the definition of an "isolated wetland," NCDEQ lacked authority to authorize discharges of fill into them.

To close this regulatory gap, the Environmental Management Commission (EMC) issued temporary rules authorizing NCDEQ to require permits in order to fill these now-unregulated wetlands (codified in 15A NCAC 02H.1400). However, when the EMC attempted to make the temporary rules permanent, the state's Rules Review Commission (RRC) objected. The RRC believed the new rules would impose more stringent requirements than required by federal law – in violation of N.C.G.S. § 150B-19.3. This led to a year-long standoff between the EMC and the RRC, which the General Assembly recently settled.

Section 15 of the 2023 Farm Act modifies the definition of a wetland for purposes of the state's

water quality standards in 15A NCAC 02B.0202. As revised, only those wetlands subject to federal Clean Water Act jurisdiction are subject to the state's wetlands water quality standards. Accordingly, discharges of fill into non-jurisdictional wetlands cannot cause a violation of state water quality standards, and therefore, no permit should be required for those discharges. This change would appear to obviate the need for the "gap-filling" regulations previously in 02H.1400 as well as the historic "isolated wetlands" rules in 02H.1300. The Farm Act makes these changes effective immediately and requires the EMC to initiate rulemaking to modify the state's administrative code to effect this change as well.

## EPA Plant Shutdown Appeal Heats Up

**BY: JESSICA J.O. KING**

EPA is attempting to use the Clean Air Act (CAA) to immediately shut down a Louisiana manufacturer that is indisputably in compliance with the emissions limits in its state issued air permit. In its emergency request to a United States District Court, EPA alleges the emissions from the plant constitute an "imminent and substantial endangerment" under Section 303 of the CAA. In support of its case, EPA does not point to emissions above a final regulatory level, but rather uses risk levels set forth in its 2010 EPA Integrated Risk Information System (IRIS) Assessment for chloroprene.

### Background

The case deals with a facility located in St. John the Baptist Parish, Louisiana, Denka Performance Elastomer LLC, (Denka) that has been manufacturing

neoprene since about 2008. In 2016, EPA and Denka each installed air monitors in the neighborhoods surrounding the facility to better understand the amount of chloroprene emissions exiting the fence line of the facility. In 2017, Denka entered into an Administrative Order on Consent (AOC) with the Louisiana Department of Environmental Quality (DEQ), whereby Denka agreed to and did in fact reduce chloroprene emissions through additional control devices.

In February of 2023, EPA sued Denka alleging air emissions of chloroprene from Denka's operations present an imminent and substantial endangerment to public health and asking the court to preliminarily shut down the facility. EPA's support for its claim of endangerment is that the average concentrations of airborne chloroprene near the facility have been consistently greater than EPA's published IRIS assessment limit of  $0.2 \mu\text{g}/\text{m}^3$  since at least 2016, based on two air monitors installed in 2016 near the facility. Specifically, the EPA's 2010 IRIS Assessment establishes  $0.2 \mu\text{g}/\text{m}^3$  as the average concentration of chloroprene that a person may breathe over a 70-year lifetime without being expected to exceed a 1-in-10,000 risk of contracting chloroprene-linked cancers.

In the meantime, in April of 2023, EPA issued a proposed rule setting National Emissions Standards for Hazardous Air Pollutants (NESHAPS) for the Group I & II Polymers and Resins Industry. Section 112(d)(2) of the CAA requires EPA to establish Maximum Achievable Control Technology (MACT) standards for listed categories of major sources of hazardous air pollutants (HAPs) and to revise them "as necessary" at least every eight years following promulgation. Section 112(f) of the CAA requires the EPA to assess the risk to public health remaining after the implementation of MACT emission standards promulgated under CAA Section 112(d)(2). If the standards for a source category do not provide "an ample margin of safety to protect public health," the EPA must promulgate health-based standards for that source category to further reduce risk from HAP emissions. In the Proposed Rule published in April, EPA proposes to strengthen the emission standards for chloroprene "after considering the results of a risk assessment for the ... Neoprene Production processes." Specifically, EPA looked at

the information gained from its published 2010 IRIS Inhalation Unit Risk Estimate (URE) for chloroprene and found that existing chloroprene emissions caps create an unacceptable residual cancer risk. Therefore, EPA proposed a substantial reduction in facility-wide emissions allowed per year and use of required new control systems. Denka submitted comments to the proposed rulemaking during the public comment period that ended in June of 2023.

In July, Denka filed a motion to dismiss the complaint, alleging EPA has no evidence to support its claim that chloroprene emissions from the facility present an imminent and substantial endangerment to public health because the emissions currently meet its permitted and regulatory limits. Other industry trade associations recently joined in the fight, filing briefs in support of Denka's motion to dismiss the case entirely.

### Section 303 of the Clean Air Act

Section 303 of the CAA gives EPA authority to bring an action in federal court for injunctive relief (e.g., shutting down a plant) to abate "imminent and substantial endangerments to public health, welfare,



or the environment caused by emissions of air pollutants." To bring such an action, the statute states EPA must be in "receipt of evidence that a pollution source" is presenting such an endangerment. The question thus becomes what Congress meant by "imminent and substantial endangerment" when it enacted Section 303. In its 1999 guidance on

the use of Section 303, EPA states it interprets “endangerment” to mean “threatened or potential harm, as well as actual harm,” but recognizes that Congress stated during hearings on the law that it “intends that the authority of this section not be used where the risk of harm is completely speculative in nature or where the harm threatened is insubstantial.” Endangerment is “imminent” according to EPA when the risk of harm exists, but the harm may not occur for a period in the future, “if at all.” Finally, the endangerment is substantial where there is a “reasonable cause for concern that health or the environment is at risk.”

Here, the issue before the court is whether average exceedance of emissions above an IRIS risk level (rather than the regulatory emission level included in the facility’s permit) can serve as the basis for a finding of imminent and substantial endangerment. Denka argues the April 2023 Proposed Rule is the proper tool for EPA to use to bring the emissions at the facility down to a level that provides an acceptable risk to human health, and that rule is still going through the rulemaking process. Furthermore, Denka points out to the court that in the Proposed Rule, EPA has waived the statutory 90-day compliance deadline for emissions limits and control technology, giving Denka instead the statutory maximum compliance deadline allowed of two years after the rule becomes effective. Denka points out that EPA cannot give such a waiver unless it finds there is no imminent endangerment. Thus, Denka argues, EPA found no imminent endangerment with the current levels at the Denka facility when writing the Proposed Rule and is now contradicting itself.

## Conclusion

While Denka is the only neoprene manufacturing facility in the United States, all manufacturers that emit air pollutants should be watching the Denka case closely. In fact, the American Chemistry Council, the United States Chamber of Commerce, the Louisiana Chemical Association, and the National Association of Manufacturers have filed briefs in the case due to their interest in whether IRIS levels can be used in an EPA enforcement action under Section 303. The case is just another example of the new ways EPA is using and plans to use multiple resources to reach a desired

result, even where a facility complies with its current regulatory limits.

*United States of America v. Denka Performance Elastomer LLC and DuPont Specialty Products USA, LLC*; C.A. No. 2:23-cv-735, U.S. Dist. Ct. E.D.LA (Feb. 28, 2023)

**88 Fed. Reg. 25080 (Apr. 25, 2023)**

## EPA Expands Conditions for 401 Water Quality Certifications

**BY: ETHAN R. WARE**

The Clean Water Act (CWA) section 401 Water Quality Certification (401 WQC) is a big deal. The certification is required for all direct discharge permits and CWA section 404 Permits to dredge or fill waters of the United States. Because most local publicly owned treatment works (POTW) are likely a direct discharger, 401 WQC restrictions on their discharge potentially affects the pretreatment requirements for the indirect discharger into the POTW as well as direct dischargers subject to NPDES permits.

EPA issued proposed revisions to the 401 WQC process on August 22, 2019. On September 27, 2023, EPA issued a final rule rewriting the 401 WQC process for all states (2023 Rule). According to EPA, the changes are necessary to “better align with the statutory text and purpose of the CWA; to clarify, reinforce, and provide a measure of consistency with elements of section 401 certification practice that have evolved over the more than 50 years...; and to support an efficient and predictable certification process that is consistent with the water quality protection and cooperative federalism....” Industry and permitting experts are not so sure.

## Procedural Background

A federal agency may not issue a license or permit to conduct any activity that may result in any discharge into ‘waters of the United States’ unless the state or authorized tribe where the discharge would originate either issues a 401 WQC that any such discharge will comply with the applicable provisions of the CWA or waives certification. When granting a 401 WQC, the CWA directs states and tribes to include conditions,

including “effluent limitations and other limitations, and monitoring requirements,” necessary to assure that the applicant for a federal license or permit will comply with applicable CWA requirements and “any other appropriate requirement of state law” and the final WQC must be made within one year of the permit application date.

**Concerns With 2020 401 WQC Rule**

It is the language allowing for states to incorporate any other appropriate requirement of state law into the 401 WQC, which is the focus of the 2023 Rule. The 2023 Rule removes limits on states under the prior regulation. In 2020, the Trump administration took steps to rein in states using the 401 WQC process to regulate activities not related to the pollutant discharges covered by the CWA permitting scheme. (“2020 Rule”). EPA believes now that effort went too far.

**Final 2023 401 WQC Rule**

The final 2023 Rule strives to correct perceived deficiencies in the 2020 Rule. Here is how EPA addresses each category of concern.

**Pre-Filing Meetings**

The 2020 Rule required proponents of 401 WQC to submit a “pre-filing meeting request” to the state or EPA for a detailed accounting of those conditions necessary under the 401 WQC process. This reduced delays in the WQC process (which risked violation of the one year limit on 401 WQC decisions) and allowed the parties to resolve insignificant issues. While the new 2023 Rule continues the pre-filing meeting process, it is a much more muted process. Importantly, the pre-filing meeting is no longer a defined process. The meeting may be waived by the WQC authority, and requests no longer must be submitted 30 days prior to filing the application for a permit triggering 401 WQC. EPA elected not to define “applicable submission procedures” or other procedural aspects of a pre-filing meeting process, removing the guts of the 2020 Rule recommendations.

Because the 2023 Rule does not compel specific action by the certifying authority as part of the pre-filing process, an



applicant does not have significant opportunity to review conditions for the 401 WQC outside of final decision; this will result in less opportunity to review specifics during the permitting/401 WQC process.

**Certification Request**

Under the new 2023 Rule, states are given substantial latitude to add conditions to the 401 WQC. This allows states to add conditions to 401 WQCs that were prohibited under the 2020 Rule.

EPA’s new 2023 Rule gives a green light for states to add conditions to the 401 WQC, which are not included in the CWA list of conditions. “[W]here a project proponent is requesting certification...and that certifying authority has identified additional required contents of a request for certification beyond the minimum contents outlined in 40 CFR 121.5(a), then the request for certification must include those additional required contents.” Notably, EPA cannot add to the list of terms set out in the regulations, so this liberates states to potentially act on behalf of EPA or on their own to expand WQC conditions.

For projects involving 401 WQC from EPA and where a state “does not specify additional contents of a request for certification (e.g., through regulation, forms, etc.)”, the 401 WQC request must include a newly specified set of data. According to the final rule, the new project must submit [at least] seven classes of information, not previously required: (1) a description of the proposed activity, including the purpose of the proposed activity

and the type(s) of discharge(s) that may result from the proposed activity; (2) the specific location of any discharge(s) that may result from the proposed activity; (3) a map or diagram of the proposed activity site, including the proposed activity boundaries in relation to local streets, roads, and highways; (4) a description of current activity site conditions, including but not limited to relevant site data, photographs that represent current site conditions, or other relevant documentation; (5) the date(s) on which the proposed activity is planned to begin and end and, if known, the approximate date(s) when any discharge(s) may commence; (6) a list of all other federal, interstate, tribal, state, territorial, or local agency authorizations required for the proposed activity and the current status of each authorization; and (7) documentation that a pre-filing meeting request was submitted to the certifying authority in accordance with applicable submission procedures, unless the pre-filing meeting request requirement was waived.

The 2023 Rule also suggests states should enforce conditions in the 401 WQC that skirt the rulemaking process. As part of the Preamble, EPA noted that states have “the ability...to define... additional contents of a request for certification in regulation or another appropriate manner, such as an official form used for requests for certification, in lieu of relying on EPA’s default list of additional contents.” Since this “another appropriate manner” and “official form” may not have to go through the rulemaking process, the suggested approach raises questions about compliance with state administrative procedure statutes and rulemaking procedures.

The scope of components considered as part of the application process is concerning under the new 2023 Rule. It authorizes states to substantially expand those items necessary for approval of 401 WQC within their jurisdiction—even potentially beyond those components relating to water quality.

## Reasonable Period of Time for WQC

Every 401 WQC decision must be made within a “reasonable period of time (which shall not exceed one year)” under the CWA. The new 2023 Rule clarifies how this timeline will now be implemented. The “reasonable period of time” will now start on a

specific date in all jurisdictions. The timeline will begin on the date that a request for certification is actually received by the certifying authority in accordance with its applicable submission procedures. The trigger date was often up for debate under the old regulations.

The final rule now allows for EPA and the certifying authority to determine (together) how long within that year the state or EPA will have to make the WQC decision, as part of the pre-filing meeting. If the federal agency and certifying authority do not agree upon a reasonable period of time, the 2023 401 WQC Rule establishes a “default” time period of six months from the date that the request for certification was received.

After the reasonable period of time is set, the 2023 Rule does allow for extensions. Any extension may not exceed one year from the date that the request for certification was received, of course, in order to not violate the CWA limitations period. The 2023 Final Rule allows for automatic extensions “due to force majeure events (including, but not limited to, government closure or natural disasters) and when state or Tribal public notice procedures necessitate a longer reasonable period of time.”

As a result of pressure from court decisions across the country, the 2023 Rule removes a proposed provision which “prohibited the certifying authority from asking the project proponent to withdraw the certification request to reset the reasonable period of time.” Instead, the Agency is taking “no position on the legality of withdrawing and resubmitting a request for certification.”

## Scope of Certification

The 2023 Rule expands the scope of conditions which may be placed on the 401 WQC issued to any applicant. The new regulation gives permission for the certification authority to consider whether the “whole ‘activity’ subject to the federal license or permit will comply with applicable water quality requirements” and not just the pollutant discharge.

The 2023 Rule requires the certifying authority “evaluate whether *the activity* will comply with applicable water quality requirements,” not the



“discharge.” It further provides that the certifying authority’s evaluation should assess “the water quality-related impacts from *the activity* subject to the federal license or permit, including the activity’s construction and operation.” The Preamble expressly states a certifying authority “shall include any conditions in a grant of certification necessary to assure that the activity will comply with applicable water quality requirements.”

The final regulatory text does require the water quality related impacts to be more than speculative. The 2023 Rule removes the word “potential” from the phrase “water quality related” in response to comments questioning the breadth of the term, but that does not necessarily narrow the application of restrictions.

This expanded scope of 401 WQC under the final rule cannot be underestimated. According to EPA, the 401 WQC process should include evaluation of the activity’s construction and operation. This suggests any environmental impact from operating the project subject to the federal license or permit triggering

401 WQC may be restricted as “any other appropriate requirement of State [or Tribal] law” without limitation.

**Conclusion And Recommended Action**

Facilities applying for or renewing NPDES permits and/or 404 fill permits may be at a disadvantage under the new regulations governing 401 WQCs. Pre-filing meetings now are not required, the WQC request is expanded, timing for a final decision is less defined, and the WQC may include restrictions or limitations on more than just the discharge of pollutants.

To best prepare for the new guidelines, it is recommended facilities evaluate all potential water quality impacts (including impacts from construction projects, operation of the business, storm water runoff, and land application processes) to minimize the risk restrictions on those practices may become part of the permits necessitating a 401 WQC decision.

**88 Fed. Reg. 66558 (September 27, 2023)**

**CONTACT US**



**Ethan R. Ware**  
Partner & Chair  
Columbia, SC  
803.567.4610



**Carrick C. Brooke-Davidson**  
Partner  
Raleigh, NC  
919.981.4027



**Jessica J.O. King**  
Partner  
Columbia, SC  
803.567.4602



**Channing J. Martin**  
Partner  
Richmond, VA  
804.420.6422



**Ramona C. "Mona" O'Bryant**  
Partner  
Raleigh, NC  
919.981.4091



**Henry R. "Speaker" Pollard, V**  
Partner  
Richmond, VA  
804.420.6537



**Sean M. Sullivan**  
Partner  
Raleigh, NC  
919.981.4312



**Ryan W. Trail**  
Partner  
Columbia, SC  
803.567.4605



**Liz Williamson**  
Partner  
Richmond, VA  
804.420.6050



**Richard H. "Dick" Willis**  
Partner  
Columbia, SC  
803.567.4611



**Amos C. Dawson, III**  
Of Counsel  
Raleigh, NC  
919.981.4010



**Ruth Levy**  
Senior Associate  
Columbia, SC  
803.567.4613



**John G. Tamasitis**  
Senior Associate  
Columbia, SC  
803.567.4617



**William D. Kuriger**  
Law Clerk\*  
Columbia, SC  
803.567.4608