



TUWaterWays

Water News and More from the Tulane Institute on Water Resources Law & Policy

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This One's for the Dead Heads

It's time to release this year's [dead zone](#) predictions... and it ain't pretty. The [hypoxic zone in Gulf of Mexico](#) is expected to [stretch 5,827 square miles this year](#). That's about the size of Connecticut. Excess nitrogen and phosphorous in agricultural runoff drains into the Gulf of Mexico via the Mississippi River, causing harmful algal bloom that suck all the oxygen out of the water, creating a [toxic marine environment](#). It's your annual reminder that current nutrient management in the Mississippi River is leaving much to be desired (yet we do [know a good resource for interstate nutrient strategies](#) if you're interested). Unfortunately, the Clean Water Act classifies agricultural runoff from drain tiles and ditches as nonpoint source pollution, meaning it is not subject to water quality regulations. So, the bulk of federal and state efforts to address nutrient pollution in the [Mississippi River Basin comes in the form of conservation funding](#) and monitoring rather than enforceable limits. However, that funding has barely made a [ripple](#) in terms of surface water quality. [Gulf Hypoxia Task Force](#) states have not achieved meaningful improvement in reducing base nitrogen and phosphorous loads, putting them woefully behind reduction targets set for 2025. In fact, phosphorous loads have actually increased by 22%.

Along [Louisiana's coast, impacts from the dead zone](#) threaten the shrimping industry, not to mention the success of river diversions and flood control projects due to water quality impacts. At the top of the river, excess nitrogen runoff also causes [nitrate contamination, posing a threat to drinking water](#) sources, rivers and lakes used for recreation. In Minnesota, testing has found nitrate levels twice the limit of what the [EPA considers safe under drinking water standards](#). Minnesota lawmakers attempted to implement 0.40 cent per ton tax on nitrogen that would have allotted revenue dedicated to help municipalities with groundwater contamination. Though unsuccessful, it's worth considering new approaches since our current system isn't [doing the trick](#).

Unfortunately, agricultural [practices that contribute to increased runoff](#) are on the rise, as are sales of commercial fertilizers. The pipe system for drain tiles stretches across 50 million acres, mostly in the Midwest. This practice has also led to the loss of an estimated 100 million acres of wetlands. Recipients of USDA benefits are prohibited from converting wetlands into farmlands under the federal Farm Bill's Swampbuster provision. And while it isn't doing much to improve the [wetlands loss problem](#), that Swampbuster provision is now facing a constitutional challenge in an [Iowa lawsuit \(brought to you by the lawyers who brought Sackett\)](#). Will the wetlands [madness ever end](#)?

PFAS Receives Classification as Forever Litigated Chemicals

And insurers will not be a [party](#). Yes, there is another emerging issue in the insurance world, but this time it's not about homeowners or flood coverage (but we can assure you that there will be more on that soon). Commercial [insurers have begun excluding coverage for liability linked to PFAS](#) contamination. [Pollution exclusions](#) are a common practice in commercial policies and are meant to put the polluting companies on the hook for damages. But with PFAS issues, this move could impact a much broader range of policyholders, like small businesses or nonprofits in the PFAS chain of commerce, as opposed to the big industrial players. It is certainly true that PFAS lawsuits are costly, often

settling for millions (and [sometimes billions](#)) in damages. The commercial insurance industry asserts that it doesn't have the financial reserves to take on such liabilities. Some experts are not so convinced.

PFAS are everywhere, and as public awareness has spread, testing and monitoring for the class of chemicals have given us a lot of data but not much in the way of comprehensively addressing the problem. How do we address [PFAS in schools](#)? In the [food we consume](#)?

This topic has been gaining more and more attention lately, but did you know that the first time we saw what was the start of forever litigation over these chemicals was in the 1990s? [I betcha didn't know that](#). Since the [first PFAS lawsuit against DuPont](#) in 1999, law firms have filed over 9,800 lawsuits related to cancer and other health harms linked to the class of chemicals. Then there's the administrative challenges – the latest from a collection of [industry groups challenging EPA's recent PFAS drinking water rule](#) that will require municipal water systems to eliminate six of the chemicals. Water utilities and chemical manufacturing trade groups have filed separate petitions. Of course, no one wants to foot the bill to bring drinking water systems into compliance. But water utilities, at least the public ones, do have a sticking point – if they have to pay, then it will [ultimately fall on ratepayers](#). The chemical groups, on the other hand, are taking the classic route arguing EPA abused its discretion in issuing the regulation. Everyone is running from PFAS, but you can't escape forever.

Well, At Least No One Has to Worry About Running out of Work to Do?

As Mexico and Texas begin recovering from [the first named storm of the Atlantic hurricane season](#), there is understandable anxiety about the sufficiency of our [coastal defenses](#) and inland protections as weather gets less predictable and more intense. In coastal areas, large investments in flood protection and risk reduction prove worthwhile on a regular basis. However, in traditionally arid places, cost-benefit analyses may not have supported comprehensive infrastructure or plans for stormwater management and flood control. Now, with extreme weather becoming the norm, swaths of the world are unprepared for today's challenges. Catastrophic [flooding devastated regions of Chile](#) that had been in a drought for the past 15 years. [Ruidoso, New Mexico, has experienced both wildfires and flash floods](#) in a matter of days. That's not to say that places with historic flooding issues are prepared either. [Heavy rain in South Florida](#) last week caused widespread flooding that could reach [hundreds of millions in insured losses](#).

If there's a silver lining, it's that [2024 update to the Water Resources Development Act](#) is [on its way](#) through Congress. This [package of legislation](#) directs funding for inland waterways, dams, ports, and flood protection projects. It's the Army Corps' ultimate playbook, and, given the never-ending water management challenges that come with climate change, updating the WRDA playbook will be important as ever.

Coming Up:

[CRCLecture - Analysis of Drought Events in the Lower Mississippi River; New Orleans, LA; June 26, 2024](#)

Water jobs:

[Hazard Mitigation Specialist, Senior; City of New Orleans; New Orleans, LA](#)

[Staff Scientist; Healthy Gulf; Houston, Southeast Texas, or Southwest Louisiana \(Remote\)](#)

[Chief Development Officer; Healthy Gulf; Gulf South \(Remote\)](#)

[Coastal Organizer; Healthy Gulf; Southeast Louisiana \(Hybrid\)](#)



The [Tulane Institute on Water Resources Law and Policy](#) is a program of the Tulane University Law School. The Institute is dedicated to fostering a greater appreciation and understanding of the vital role that water plays in our society and of the importance of the legal and policy framework that shapes the uses and legal stewardship of water.

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