REGULATORY REFORM

A key priority for the Trump Administration is the rollback, delay, and reform of Federal regulations that inhibit economic growth and job creation. Having a business-friendly administration in office presents an opportunity for the Cement and Concrete Industry to advocate for the changes it sees as vital. Three significant areas of industry focus are Federal water jurisdiction, air quality, and occupational health and safety.

Waters of the United States
In 2015, the Environmental Protection Agency (EPA) proposed the Waters of the United States Rule (WOTUS), which expanded the federal government’s authority to regulate waters and wetlands. If implemented, the rule would increase regulatory burdens and create uncertainty for the cement industry in implementing numerous Clean Water Act permitting programs.

The EPA is now moving in a two-step process to repeal and replace the rule. The first step, completed on January 31, 2018, delays the effective date of the WOTUS rule for two years. Next, the EPA will conduct a review and potential replacement rulemaking that accounts for the numerous legal challenges to the 2015 WOTUS. EPA is expected to finalize its proposed repeal of the WOTUS Rule in April 2018 and issue a proposed replacement rule in May 2018. A final replacement rule is expected by June 2019.

NACA members are part of a broader coalition of businesses that challenged the rule in several jurisdictions and is actively advocating for the delay, repeal, and replacement of the flawed rule.

Air Quality
The EPA is working to improve federal air quality regulations under the Clean Air Act, such as a possible repeal and replacement of the Clean Power Plan and improve guidance for New Source Review program.

- **Clean Power Plan (CPP):** the EPA has proposed to repeal (and potentially replace) the 2015 CPP, an Obama Administration regulation that sets the stage for regulation of greenhouse gas (GHG) emissions from other stationary sources and industries.

  While the CPP rule focuses on the power plant industry, the policy and legal framework adopted for any CPP replacement rule could shape future EPA efforts to regulate the cement and concrete industry under section 111 of the Clean Air Act. NACA members have challenged the CPP in court and have participated actively in administrative efforts to repeal the 2015 rule.

  Citing many of the legal and policy comments raised by NACA members, EPA formally proposed in December 2017 to repeal the CPP. In a separate notice, at the urging of many industry stakeholders, EPA is soliciting comments on potential alternative approaches for regulating GHG emissions from power plants under the CAA.

  NACA members continue to participate in litigation opposing the 2015 CPP rule and are evaluating the precedential implications of a potential CPP replacement rule.

---

**CONTACT INFORMATION**

**RACHEL DERBY**, Vice President, Government Relations, Portland Cement Association  
**PHONE:** 202.679.8223 **EMAIL:** rderby@cement.org
REGULATORY REFORM

- **New Source Review (NSR):** NSR requires facilities to obtain a preconstruction permit before the construction of a new major stationary source or a “major modification” to an existing stationary source. These permitting requirements can be time and resource intensive, often delaying projects by months if not years. The current administration has identified NSR reform as a priority, and EPA has already acted to address a number of long-standing concerns. Even with these improvements there is much more to do to fix the NSR program.

  *NACA members are working with Congress, the Administration, and stakeholders to further streamline the NSR process.*

- **Workplace Examination Rule (WPE):** Mine Safety and Health Administration (MSHA) has set standards requiring that mine operators examine (inspect) working sites, and take certain actions following observation of a risk. MSHA published the WPE Final Rule on January 23, 2017, in a “midnight rulemaking” at the end of the last Administration. NACA members joined an industry coalition in challenging the WPE Regulation, which changed the rules governing work place examinations in metal and nonmetal mines, imposing significant new burdens and costs without well-identified benefits to safety. MSHA has issued several compliance date extensions while working with industry on concerns.

  In April 2018, MSHA published a final rule providing additional flexibility to WPE recordkeeping, addressing some, but not all, of industry’s concerns. The effective date is now June 2, 2018.

  *NACA members are assessing their litigation strategy in the wake of the recent amendments and continue to engage the Administration on implementation.*

- **Silica:** OSHA has finalized regulations that significantly reduce the level at which employees may be exposed to respirable crystalline silica ("OSHA CS Rule"). It also imposes more burdensome operational, medical surveillance, and record-keeping requirements. The OSHA CS rule includes two standards: one for construction and one for general industry and maritime operations. Concrete products and ready-mixed concrete operations are subject to the second standard, as are cement terminals, even though exposures at cement terminals are extremely low. The construction compliance date took effect in September, 2017, while the general industry compliance date is now June 2018. The OSHA rule likely will influence a similar crystalline silica rule that MSHA is scheduled to propose. Most cement manufacturing facilities fall within MSHA jurisdiction.

  *Industry is developing a coalition to engage with MSHA during the proposal stage to help shape the design of any proposed MSHA regulatory framework.*