



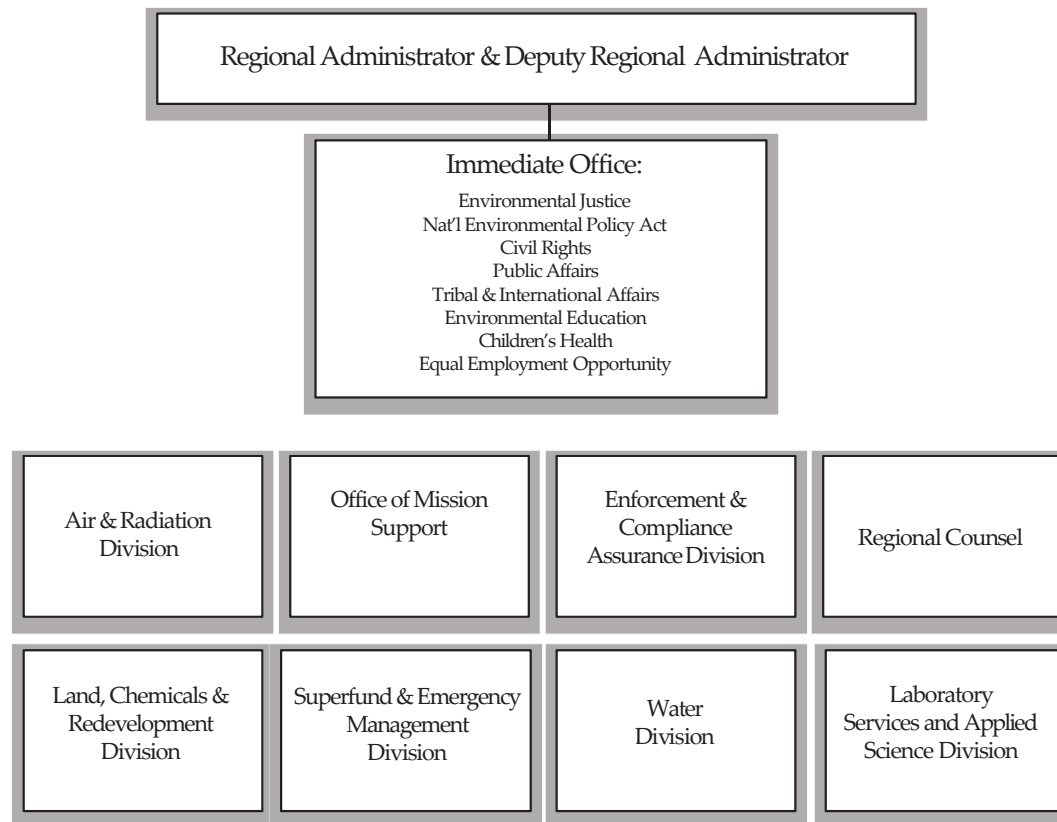
EPA Legal Update

DAVE COZAD

REGIONAL COUNSEL, REGION 7

MAY 1, 2019

New Organization for EPA's Region 7 Office





Regulatory Reform: Big Three Proposed Rules

- “ACE”
 - Affordable Clean Energy Act
- “WOTUS”
 - Waters of the United States
- “SAFE”
 - Safe Affordable Fuel Efficiency

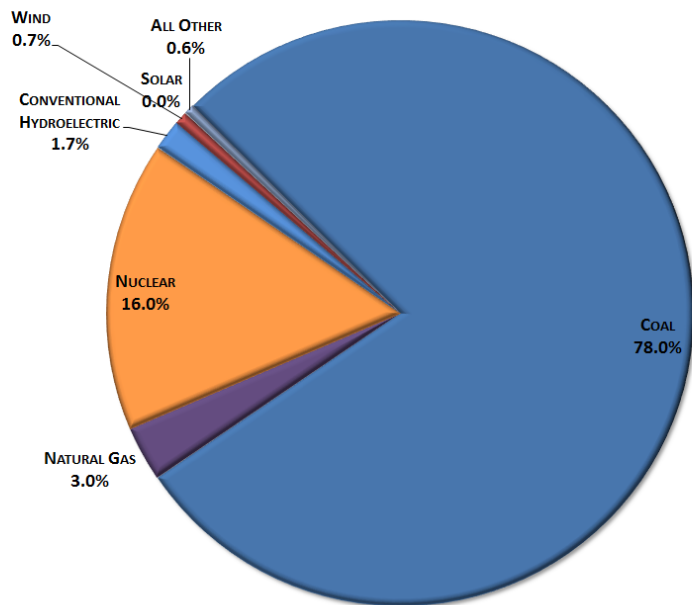


Affordable Clean Energy Rule: Carbon Dioxide at Coal Plants

- **CAA Section 111(d):** Best system of emission reductions (“BSER”)
- **2015 “Clean Power Plan” rule withdrawn**
 - Set emission reduction targets for each state, required states to submit plan to meet targets
 - Combination of improved plant efficiency, conversion to natural gas, increased renewables
 - Repealed as “beyond statutory authority” and inappropriate consideration of “co-benefits”
- **June 2019 New Final Rule: Affordable Clean Energy Rule (“ACE”)**
 - Establishes efficiency improvement as BSER for CO₂ from coal-fired power plants
 - Identifies six candidate technologies for use at, and on, affected facilities
 - Requires each state to submit a plan that establish standards of control for each unit
 - Plans due in three years

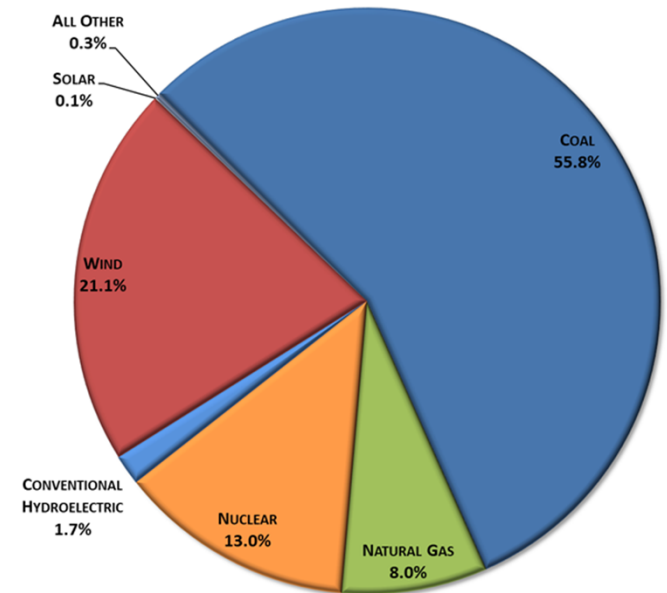
Utility Scale Energy Mix in Region 7 2002-2018

NET GENERATION BY FUEL TYPE
EPA REGION 7 - 2002



- As wind generation continues to grow, coal utilization in Region 7 is dropping
- In 2018, 21.1% of electricity demand in Region 7 was met through wind
- Region 7 has the highest wind penetration, as percent of overall energy mix, in US

NET GENERATION BY FUEL TYPE
EPA REGION 7 - 2018



What is the Scope of the Clean Water Act?

- Clean Water Act prohibits discharges of pollutants into “**navigable waters**” without a permit
 - 33 U.S.C. Sections 1311(a), 1342(a)
- Clean Water Act defines “**navigable waters**” as “**the waters of the United States**”
 - 33 U.S.C. Section 1362(7)
- Repeal of prior Admin “Clean Water Rule” finalized in August 2019
- New definition proposed rule in December 2018
- Expect to finalize soon

Proposed WOTUS Rule

WATERS INCLUDED

Traditional navigable waters, including territorial seas

Tributaries

Certain ditches

Certain lakes and ponds

Impoundments

Adjacent wetlands

WATERS EXCLUDED

Groundwater

Ephemeral features and diffuse stormwater run-off

Ditches not identified as WOTUS

Prior converted cropland (PCC)

Artificially irrigated areas that would revert to upland should irrigation cease

Artificial lakes and ponds constructed in upland

Stormwater control features constructed in upland

Wastewater recycling structures constructed in upland

Waste treatment systems

Fuel Efficiency Standards

- Sept. 19, 2019: Finalized “One National Program Rule”
 - Nationwide uniform fuel economy and greenhouse gas emission standards
 - Federal law preempts state and local tailpipe GHG standards as well as ZEV mandates
 - Withdrawal of California’s CAA waiver for GHG emission standards
- Upcoming: Finalization of “SAFE” rule setting fuel efficiency standards for model year 2021-2026 cars
 - Proposed August 2018
 - Proposed to lock in 2020 standard of 37mpg for years 2021-2026
 - Existing Obama-admin rule would have increased standard to 45 mpg by 2026

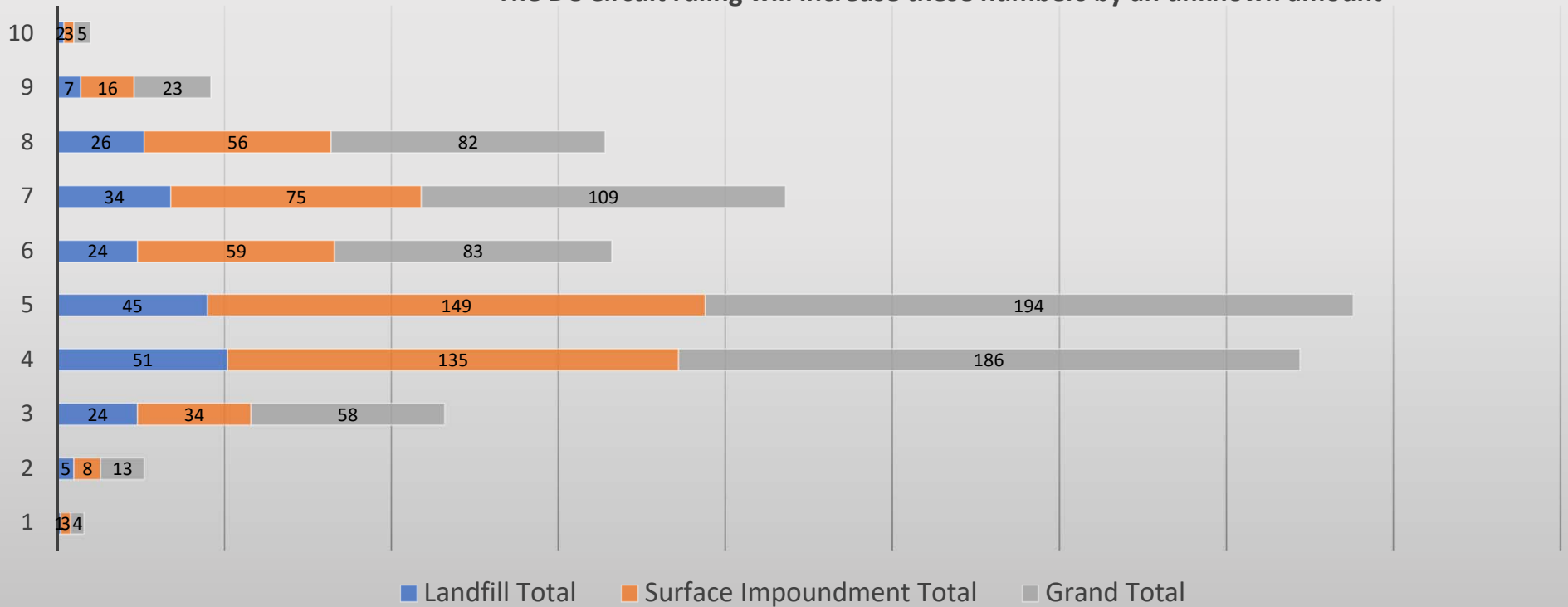
Other Things to Watch

- Drinking Water – Lead and Copper Rule: to be proposed soon
- 112r rule revisions: Proposed June 2018
- Coal Ash Rule revisions: Response to D.C. Circuit decision expected soon
- Oil and Gas NSPS revisions – proposed August 28, 2019
- CWA Section 401 Certification Proposed Rule: Proposed August 8, 2019
- PFOS/PFOA potential rulemakings
- Supreme Court: *Hawaii Wildlife Fund v. County of Maui*



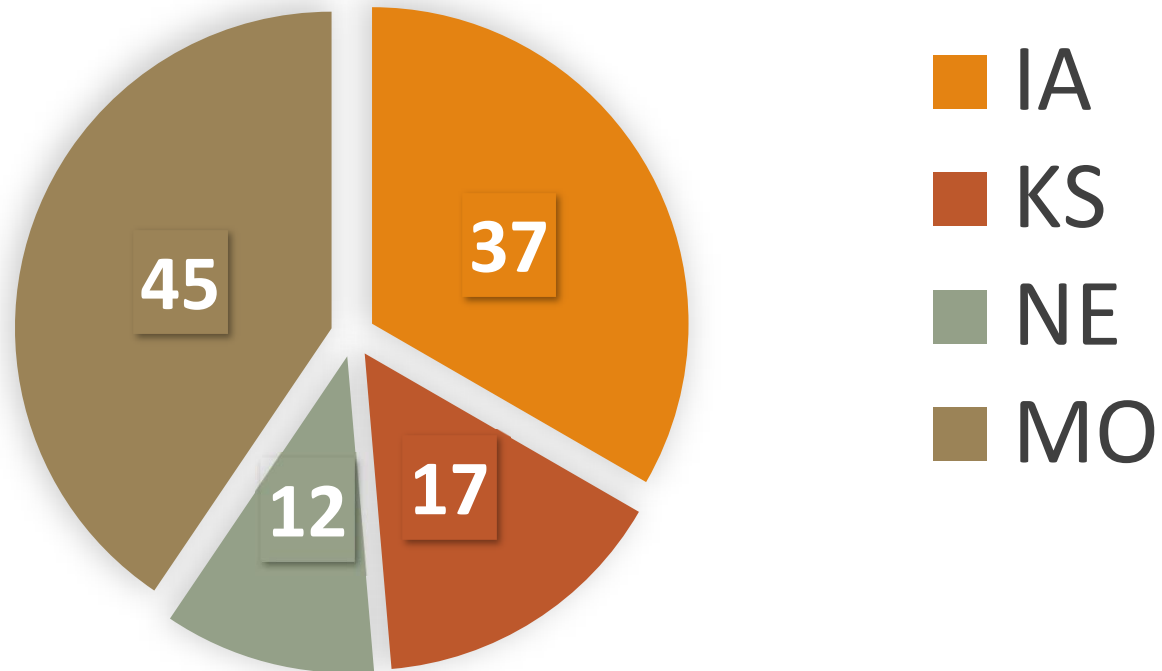
*CCR Units by EPA Region

*The DC Circuit ruling will increase these numbers by an unknown amount





Region 7 States Total Coal Combustion Residue Units





Enforcement Direction

- Compliance is the goal
- Focus on environmental problems
 - Don't target industry sectors
- Contribute to Agency Strategic Plan Goals
- Cooperative Federalism

Creating Cleaner Air for Communities by Reducing Excess Emissions of Harmful Pollutants from Stationary Sources

Reduce emissions of both volatile organic compounds (VOCs) and hazardous air pollutants (HAPs)

VOCs: focus on significant sources of VOCs that have a substantial impact on air quality and

- (1) may adversely affect an area's attainment of National Ambient Air Quality Standards (NAAQS), or
- (2) may adversely affect vulnerable populations

HAPs: focus on sources that have a significant impact on air quality and health in communities

R7: Approximately 40 inspections in FY2020

Stopping Aftermarket Defeat Devices for Vehicles and Engines

Numerous companies and individuals have manufactured and sold hardware and software specifically designed to defeat required emissions controls in violation of the CAA

Illegally-modified vehicles and engines contribute substantial excess pollution that harms public health and impedes efforts by the EPA, tribes, states, and local agencies to plan for and attain air quality standards

Reducing Significant Noncompliance with NPDES Permits

Focus on increasing the percentage of all NPDES permittees in compliance with their permit

Goals:

- Reduce by half the national SNC baseline rate of 29.4% by the end of FY 2022
- Assure that the worst SNC violators are timely and appropriately addressed

Reducing Noncompliance with Drinking Water Standards

Goal: 25% reduction in the number of Community Water Systems (CWSs) out of compliance with health-based standards by the end of FY 2022

By September 30, 2022, reduce the number of community water systems out of compliance with health-based standards from 3,600 to 2,700

Today: 188 noncompliant systems in R7

Reducing Hazardous Air Emissions from Hazardous Waste Facilities

- Focus on Treatment, Storage, and Disposal Facilities (TSDFs) and Large Quantity Generators (LQGs) for compliance with the regulations that control organic air emissions from certain hazardous waste management activities
- Common violations:
 - Leaking or open tank closure devices, pressure relief valves
 - Failure to monitor
- Leaks from these facilities can contribute to non-attainment with the NAAQS

Reducing Risks of Accidental Releases at Industrial and Chemical Facilities

Goal: reduce the risk to human health and the environment by decreasing the likelihood of chemical accidents at CAA § 112(r) regulated facilities

R7 Focus: Ammonia refrigeration, fertilizer distribution, chemical plants

Approximately 30 inspections in FY2020

PFOS/PFOA

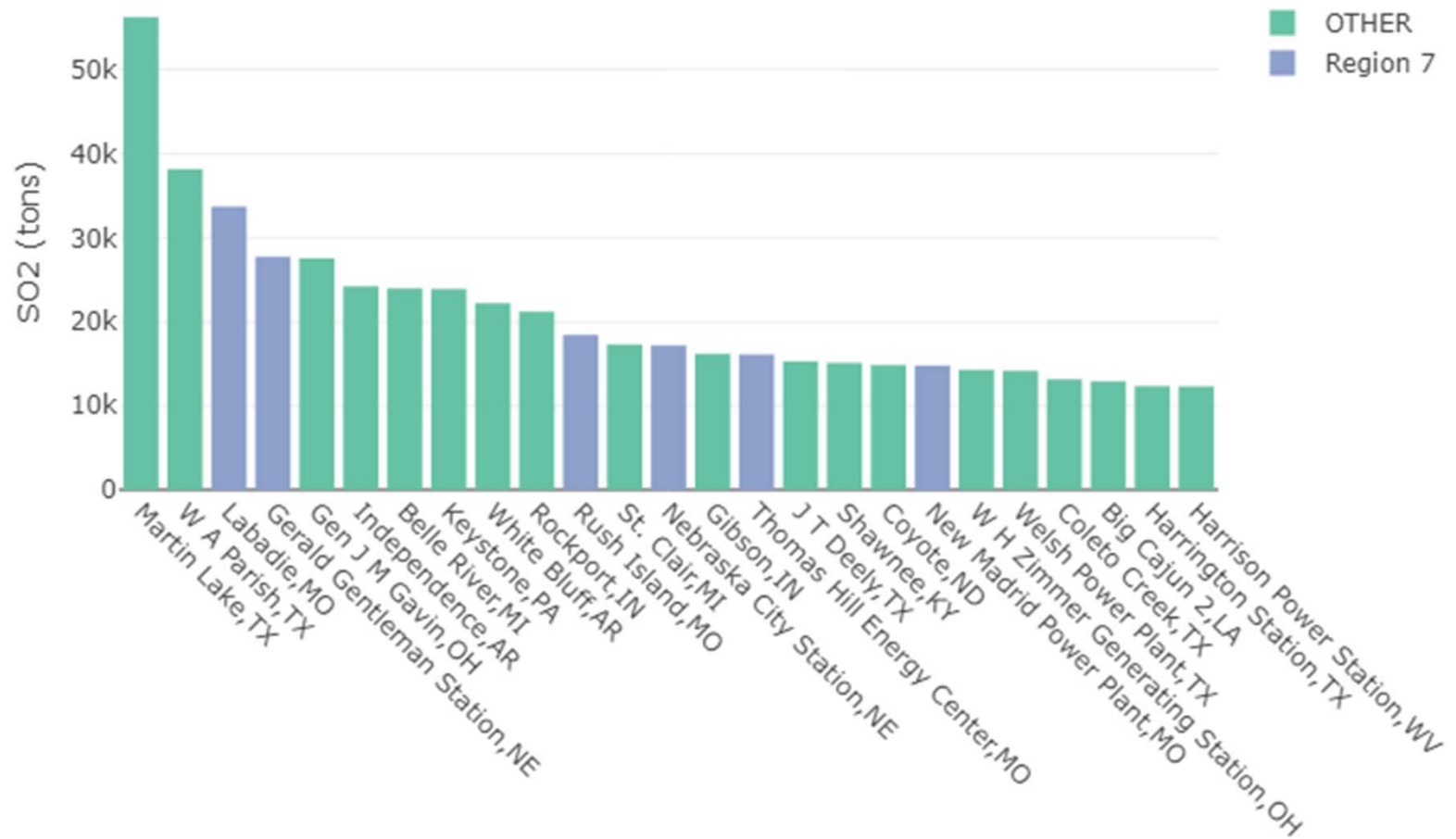
- Safe Drinking Water Act
 - ~~Regulatory Determination Planned for 2019~~
 - Lifetime Health Advisory of 70 ppt for total PFOA and PFOS
- CWA – Regulates PFAS as pollutant under NPDES
- Toxic Substance Control Act - Regulates usage of PFASs in industrial settings
- CERCLA – Regulates cleanup of hazardous waste sites with PFAS as Pollutant or Contaminant; EPA developing HS listing
- RCRA – PFAS are not a RCRA listed or characteristic hazardous waste (i.e., not a RCRA subtitle C “regulatory” hazardous waste)

National Top 25 Highest SO2 Emitting Electric Generating Plants

- Region 7 has six (6) of the top 25 emitting SO₂ coal-fired power plants in the nation in 2018, including:

- AmerenUE Labadie (#3)
- AmerenUE Rush Island (#11)
- NPPD Gerald Gentleman (#4)
- AECI Thomas Hill (#15)
- OPPD, Nebraska City (#13)
- AECI New Madrid (#19)

2018 SO2 Top 25





Ameren Litigation

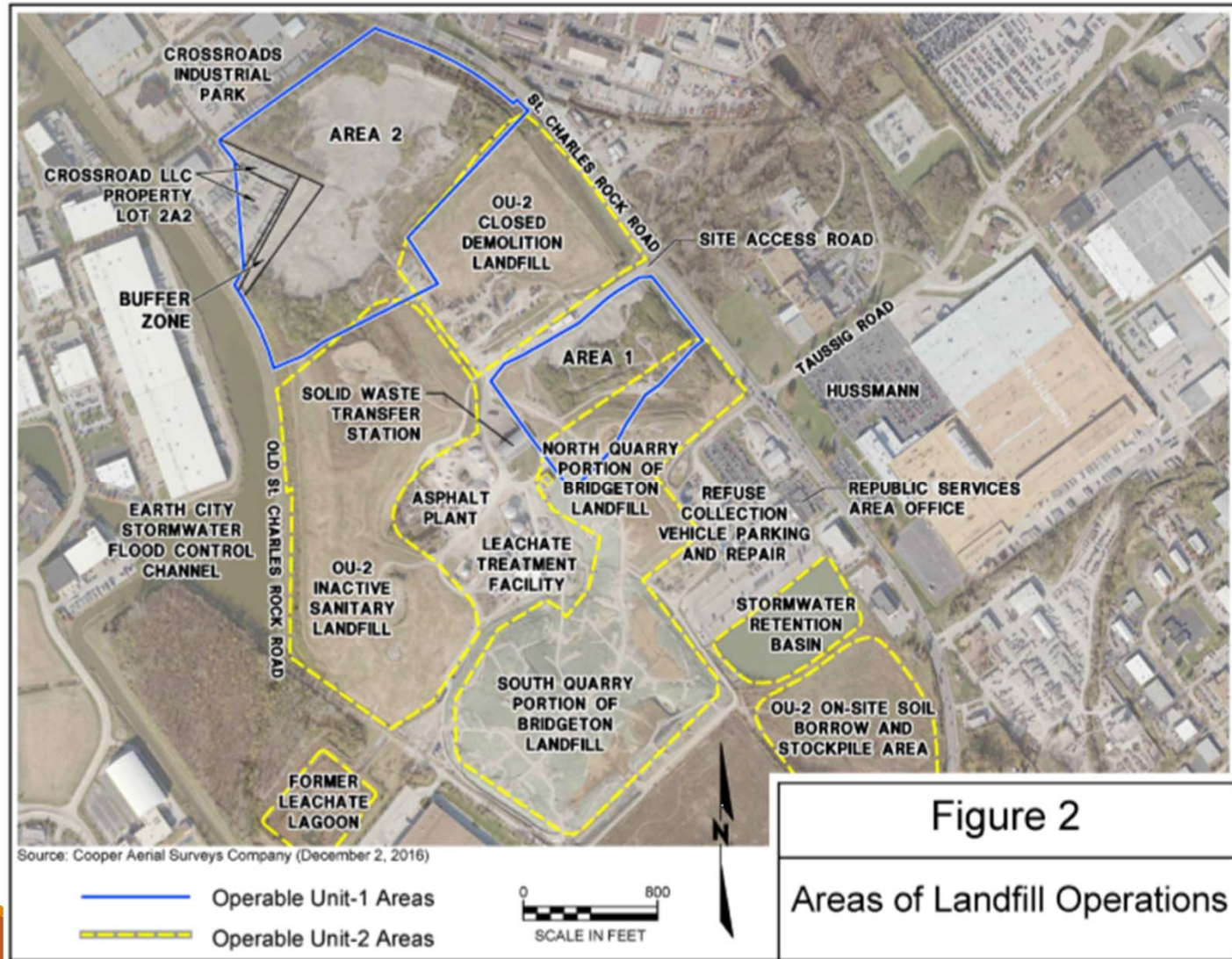




Local Water Issue: EPA Approves Missouri's Nutrient WQS



Westlake



Selected Alternative – Excavation of 52.9 pCi/g down to 12 feet

Cost: \$205 million

Time to implement: 3 years

Radioactivity removed: 67%

Engineered cover

