

# What You Need to Know About the Rollback of Clean Water Safeguards

## What is the Clean Water Rule and Why is it Important?

The EPA and the U.S. Army Corps of Engineers adopted the Clean Water Rule in May 2015 to clear up longstanding confusion over which water bodies the landmark 1972 Clean Water Act protects. The rule more clearly defines what kinds of waters get guaranteed coverage and which ones are exempt.

The water bodies at the center of the Clean Water Rule serve critical functions. Notably, **more than 117 million Americans receive drinking water from public systems that draw supply from headwater, seasonal, or rain-dependent streams.**

Wetlands cover roughly 110 million acres in the continental U.S., which filter pollution from contaminated runoff and replenish groundwater. An acre of wetlands can also store upwards of a million gallons of flood water, and wetlands provide essential fish and wildlife habitat, supporting a robust outdoor recreation economy.

Before the Clean Water Rule, confusion hamstrung law enforcement, scuttling pollution investigations. EPA enforcement staff revealed that an estimated 489 enforcement cases in just a few-year period were adversely affected. For example, EPA reported that a Texas facility discharged around 43,000 gallons of wastewater on-site, which entered a creek that flowed into a large waterway. After EPA spent over 300 hours to determine the legal status of the waters, the Assistant U.S. Attorney declined to prosecute the case because of concerns about the government's authority.<sup>i</sup>

## What Does It Mean for a Water Body to be Protected by the Clean Water Act?

For protected water bodies, numerous pollution prevention, control, and cleanup programs kick in. For example:

- Wastewater dischargers and sewage plants may not dump into such waters without pollution-limiting permits;
- Facilities storing significant amounts of oil near covered waters must develop oil spill prevention and response plans;
- States must identify and prepare plans to clean up protected waters that don't meet state water quality standards;
- Industrial and commercial developers ordinarily must obtain approval before discharging solid material into protected waters, destroying valuable wetlands and degrading lakes and streams; and these dischargers sometimes must mitigate their impact by creating, preserving, or enhancing other water resources;
- Nobody may discharge "any radiological, chemical, or biological warfare agent, any high-level radioactive waste, or any medical waste" into covered waters; and
- Entities disposing sewage sludge that could pollute such waters must abide by pollution control standards.

## How Was the Clean Water Rule Developed?

After many stakeholders, ranging from regulated dischargers to environmentalists to states, requested it, EPA and the Corps undertook rulemaking to clarify their rules. EPA produced a report which reviewed more than 1,200 peer-reviewed scientific publications and confirmed that streams and wetlands are connected to downstream waters in significant ways.<sup>ii</sup> The agencies then developed a rule that relies on this strong scientific basis and specifies that the Clean Water Act can protect those kinds of waters that have meaningful water quality impacts downstream. But the rule was not developed in a vacuum; the agencies took comment on the proposal from April 21-November 14, 2014, a long comment period that itself followed years of public engagement. During the comment period, EPA met with more than 400 stakeholders and received more than one million comments, **87% of which were supportive of the rule.**



## Who Supported the Clean Water Rule?

Numerous stakeholders support the Clean Water Rule, with polling showing that:

- **80% of small business owners supported the proposed Clean Water Rule** (91% of Democrats, 73% of Independents, and 78% of Republicans). A strong majority, 71%, also said that clean water protections are necessary to ensure economic growth.<sup>iii</sup>
- **83% of hunters and anglers surveyed by a bipartisan team thought that EPA should apply the rules and standards of the Clean Water Act to smaller, headwater streams and wetlands.** Support included 77% of Republicans, 79% of Independents and 97% of Democrats.<sup>iv</sup>
- Similarly, **80% of voters nationwide supported the rule**, including 68% of Republicans, 75% of Independents, and 94% of Democrats. Additionally, more than three in five voters think the government should be doing *more* to protect the nation's waters from pollution.<sup>v</sup>

## How Would the Trump Administration Weaken Protections?



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In February, President Trump signed an [executive order](#) starting a process to repeal the Clean Water Rule and replace it with a set of rules that would substantially weaken the regulations that the Reagan administration adopted. Specifically, the order tells the agencies to “consider interpreting” the Clean Water Act as the late Justice Antonin Scalia did in a 2006 opinion. The agencies, led by EPA Administrator Scott Pruitt, have started planning actions that would do just that. This is the same Scott Pruitt who, as Oklahoma’s Attorney General, sued the agencies to kill the Clean Water Rule, and routinely and falsely denigrates it as covering trivial features like puddles.

Following Justice Scalia’s opinion would disable federal pollution safeguards for streams unless they are “relatively permanent,” and exclude wetlands that do not have a “continuous surface connection” to other covered waters. **The implications of that are astonishing; it could mean the loss of pollution protections for the nearly 60% of streams in the lower 48 states that don’t flow year-round -- almost 2 million miles of streams.** It also could mean the end of Clean Water Act protection for countless wetlands – perhaps even most of the 110 million acres in the continental U.S. – because they don’t have a surface connection to “relatively permanent” waters.

That is unsound policy from a scientific, legal, and fiscal standpoint. **Streams and wetlands provide some of the most critical ecosystem services, including water filtration services supporting clean drinking water and water storage services protecting communities from flooding and from drought.** Unlike the Clean Water Rule, the Administration’s clean water rollback plan ignores the scientific evidence demonstrating how water bodies influence downstream water quality and water flows. It fails to acknowledge, for example, the increased costs for drinking water treatment associated with increased water pollution, and the increased public and private costs associated with increased flooding, flood risks, and flood damage. The rollback plan also reflects unsound legal reasoning. A majority of justices on the Supreme Court rejected Justice Scalia’s opinion as the lone standard for Clean Water Act coverage, as did the Bush administration and every federal court of appeals to consider the question.

### What's Happening with the Rollback Plan Now?

The Administration intends to roll back safeguards in [two steps](#). It plans to repeal the Clean Water Rule in a hurry, then invent a new, disastrous rule that would roll back clean water safeguards for wetlands and streams, as the executive order urges. The agencies have already drafted a proposed repeal rule, which could be announced any day. They have also started getting input from selected interested parties about the new rule. Administrator Pruitt [recently said](#) he hopes to finish both rules by the end of 2017 or early 2018.

This two-step scheme seems to reflect administration fears that their second step, to change the legal test and radically roll back what the Clean Water Act protects, will fail, so they don't want to tie their repeal of the Clean Water Rule to that anchor. They also seem to be rushing the Clean Water Rule repeal to avoid judicial review of the Clean Water Rule in court, where litigation about the validity of the Clean Water Rule remains pending. They are racing to repeal the rule before a court can independently review its basis in science and the law.

**Ultimately, the Administration's clean water rollback plan means that fewer streams, wetlands, and other waters would be protected** by the Clean Water Act's oil spill prevention program, its requirement to develop cleanup blueprints for polluted waters, its pollution control standards for industrial dischargers, its protections against burying streams and wetlands, and numerous other safeguards. It means more pollution to the lakes and streams we rely on for drinking water supply or for fishing and swimming, and a green light for the rampant destruction of wetlands that prevent dangerous flooding.



## **PROTECT THE CLEAN WATER RULE AND REJECT CLEAN WATER ROLLBACKS**

<sup>i</sup> EPA & Army Corps, Economic Analysis of Proposed Revised Definition of Waters of the United States, March 2014

<sup>ii</sup> EPA, Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of Scientific Evidence (Final Report), Jan 2015, <https://cfpub.epa.gov/ncea/risk/recordisplay.cfm?deid=296414>

<sup>iii</sup> American Sustainable Business Council, New Poll: Small Business Owners Want Strong Clean Water Rules, July 2014, <http://asbcouncil.org/news/press-release/new-poll-small-business-owners-want-strong-clean-water-rules#.WSRLryMrK2x>

<sup>iv</sup> National Wildlife Federation, New Poll: Hunters and Anglers Nationwide Support the Clean Water Rule, July 2015, <http://www.nwf.org/News-and-Magazines/Media-Center/News-by-Topic/Wildlife/2015/07-22-15-New-Poll-Hunters-and-Anglers-Nationwide-Support-the-Clean-Water-Rule.aspx>

<sup>v</sup> League of Conservation Voters, Voters Favor the Clean Water Rule by a Wide Margin, August 2015, <https://www.lcv.org/article/memo-voters-favor-the-clean-water-rule-by-a-wide-margin/>