

US EPA ARCHIVE DOCUMENT

The Clean Water Rule for: LOCAL GOVERNMENT



WHY THE CLEAN WATER RULE IS IMPORTANT

Clean water is vital to our health, communities, and economy. Our communities are impacted by what happens upstream. The water flowing from streams and wetlands ends up in the rivers, lakes, and bays by our homes. Streams and wetlands provide many benefits to communities by trapping floodwaters, recharging groundwater supplies, filtering pollution, and providing habitat for fish and wildlife. We all live downstream and need the water to be clean.

People depend on clean water for their health: About 117 million Americans – one in three people – get drinking water from small streams that need protection from pollution under the Clean Water Rule. Our cherished way of life depends on clean water: healthy ecosystems provide wildlife habitat and places to fish, paddle, surf, and swim. Our economy depends on clean water: manufacturing, farming, tourism, recreation, energy production and other economic sectors need clean water to function and flourish.

Counties, cities and townships need the clarity of knowing which waters are protected to administer their clean water programs and to build and maintain their infrastructure, like roads and ditches, water treatment facilities, and stormwater systems. Local governments are the largest providers of clean water in the U.S., and the Clean Water Rule will make this job easier.

WHAT IS THE CLEAN WATER RULE

Protection for about 60 percent of the nation's streams and millions of acres of wetlands has been confusing and complex since Supreme Court decisions in 2001 and 2006. The Clean Water Rule protects the streams and wetlands that are scientifically shown to have the greatest impact on downstream water quality and form the foundation of our nation's water resources. EPA and the U.S. Army are ensuring that waters protected under the Clean Water Act are more precisely defined, predictably determined, easier to understand, and consistent with the law and the latest science. The Clean Water Rule will provide greater clarity and certainty to local governments. The rule does not create any new permitting requirements, and reduces economic burdens on communities by simplifying and speeding up the process of determining if a water is protected. The rule **does not** protect any types of waters that have not historically been covered by the Clean Water Act. It also does not interfere with or change private property rights, or address land use.

The Clean Water Act protects the nation's waters. A Clean Water Act permit is only needed if these waters are going to be polluted or destroyed.

INPUT SHAPED THE RULE

EPA and the Army have met with and listened carefully to input from hundreds of local officials and worked closely with key intergovernmental associations to understand local issues. Administrator McCarthy asked EPA's Local Government Advisory Committee to host a series of meetings with local officials around the country and report to her on findings and recommendations. The agencies reviewed over one million public comments and studied perspectives from all sides. The final rule carefully considers all of this input and addresses the critical issues raised by local officials.

THE RULE DOES

The Clean Water Rule maintains the current status of municipal separate storm sewer systems (MS4s) and encourages the use of green infrastructure to protect water quality. Existing jurisdictional determinations and permits continue to be valid until they expire. It promotes more consistent and effective implementation of Clean Water Act regulatory programs and sets the stage for permit streamlining during implementation. The Clean Water Rule also preserves agricultural exemptions from dredged or fill permitting requirements. Specifically, the Clean Water Rule:

- **Clearly defines and protects tributaries that impact the health of downstream waters.** The Clean Water Act protects navigable waterways and their tributaries. The rule says that a tributary must show physical features of flowing water – a bed, bank, and ordinary high water mark – to warrant protection. The rule provides protection for headwaters that have these features and science shows can have a significant connection to downstream waters.
- **Provides certainty in how far safeguards extend to nearby waters.** The rule protects waters that are next to rivers and lakes and their tributaries because science shows that they impact downstream waters. The rule sets boundaries on covering nearby waters for the first time that are physical and measurable.
- **Protects the nation’s regional water treasures.** Science shows that specific water features can function like a system and impact the health of downstream waters. The rule protects prairie potholes, Carolina and Delmarva bays, pocosins, western vernal pools in California, and Texas coastal prairie wetlands when they impact downstream waters.
- **Focuses on streams, not ditches.** The rule limits protection to ditches that are constructed out of streams or function like streams and can carry pollution downstream. So ditches that are not constructed in streams and that flow only when it rains are not covered.
- **Maintains the status of waters within Municipal Separate Storm Sewer Systems.** The rule does not change how those waters are treated and encourages the use of green infrastructure.
- **Reduces the use of case-specific analysis of waters.** Previously, almost any water could be put through a lengthy case-specific analysis, even if it would not be subject to the Clean Water Act. The rule significantly limits the use of case-specific analysis by creating clarity and certainty on protected waters and limiting the number of similarly situated water features.

THE RULE DOES NOT

- Protect any new types of waters that have not been historically been covered.
- Interfere with or change private property rights, or address land use.
- Regulate most ditches.
- Regulate groundwater or shallow subsurface flows.
- Change policy on irrigation or water transfers.
- Address issues associated with permit streamlining. While permit streamlining is outside the scope of this jurisdictional rule, this final rule will help localities know if a water is “in” or “out.”

FOUNDATION IN SCIENCE

Science shows us the most important waters to protect. In developing the Clean Water Rule, the Agencies utilized the latest science, including a report summarizing more than 1,200 peer-reviewed, published scientific studies which showed that small streams and wetlands play an important role in the health of larger downstream waterways like rivers and lakes.

MORE INFORMATION: WWW.EPA.GOV/CLEANWATERRULE & WWW.ARMY.MIL/ASACW