

FACT SHEET

Report on the Repeal of the Clean Water Rule and its Replacement with the Navigable Waters Protection Rule

Overview

In this report, top environmental economists find that the EPA used dubious methodology to justify weakening the Clean Water Act. The EPA and the Army Corps of Engineers repealed the Clean Water Rule, the Obama-era regulation that defined bodies of water protected from pollution under the Clean Water Act (CWA). The agencies replaced the Clean Water Rule with the Navigable Waters Protection Rule (NWPR), which strips CWA protection from isolated wetlands and ephemeral and intermittent streams.

Authors

The [External Environmental Economics Advisory Committee](#) (E-EEAC) is an independent organization providing nonpartisan advice on the state of economic science as it relates to EPA programs. It was formed after EPA dissolved its own longstanding Environmental Economics Advisory Committee in 2018. Co-authors of this E-EEAC report are:

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| David Keiser , UMass Amherst (co-chair) | Bonnie Keeler , University of Minnesota |
| Sheila Olmstead , University of Texas at Austin (co-chair) | Daniel Phaneuf , University of Wisconsin |
| Kevin Boyle , Virginia Tech | Joseph S. Shapiro , Univ. of California, Berkeley |
| Victor Flatt , University of Houston | Jay Shimshack , University of Virginia |

Key Findings

In developing the rule, the E-EEAC found that the agencies' questionable methodology included:

• **Considering water quality to be a "local public good" only**

- Extensive research shows that even ephemeral streams and isolated wetlands connect to larger watersheds and affect what happens downstream
- Considering only local effects skews the benefit-cost analysis

• **Assuming states will protect bodies of water that have lost federal protection**

- The record shows this doesn't happen: SCOTUS overturned the Migratory Bird Rule in 2001, removing federal protection from many wetlands. Since then, only a few states have extended jurisdiction to protect affected waters
- This assumption skewed the benefit-cost analysis

• **Assuming that every state has the same number of wetland acres**

- For the purposes of calculating nationwide benefits, one size fits all, from Arizona to Florida

• The EPA's decision to make major changes to the rules protecting the nation's waterways relies on economic analysis that may underestimate the benefits of streams and wetlands, especially as they affect waters downstream.



David Keiser, Report Co-author
University of Massachusetts, Amherst

• Assuming that many states will enact new legislation that doesn't currently exist violates EPA's own [Guidelines for Preparing Economic Analyses](#).



Sheila Olmstead, Report Co-author
University of Texas at Austin

NWPR Impacts

- According to a 2017 staff analysis by the EPA and the Army Corps, the rule removes Clean Water Act protections from:
 - Over half of U.S. wetlands
 - 18% of U.S. streams
 - 35% of streams in the West
- The new rule makes it easier for developers, agricultural operations, oil and gas companies, and mining companies to dredge, fill, divert and pollute waterways

Ripple Effects

- Worsening water pollution onsite and downstream
- Increased flood damage to communities as wetlands disappear
- Loss of habitat for birds, fish and other species
- Diminished recreational waterways
- More frequent algal blooms

What's next

- President-elect [Biden](#) has promised that his administration will review the rule change as part of its effort to undo environmental regulatory rollbacks by the Trump administration
- [Court cases](#) against the new rule are ongoing
- The [Army Corps of Engineers](#) is making faster decisions on permitting requests affecting wetlands and streams, and is finding it has no jurisdiction in most cases
- Companies are rushing to [take advantage](#) of the looser rule, from a [titanium mining](#) project near the Okefenokee National Wildlife Refuge in Georgia to [coal mining](#) companies in several states

More

- [Op-ed](#) by E-EEAC co-chairs looks at damage done to the EPA's work over the past four years, and at what needs to change going forward

• The Biden administration will attempt to respond to a number of EPA rule rollbacks undertaken by the Trump administration. This report points to how a Biden administration can correct structural weaknesses in this rule as well as other important EPA policies.



JR DeShazo
UCLA's Luskin Center for Innovation