

Protecting Clean Water While Respecting Agriculture

By Administrator Gina McCarthy and Assistant Secretary of the Army Jo-Ellen Darcy

Today, EPA and the U.S. Army finalized a rule under the Clean Water Act to protect the streams and wetlands we depend on for our health, our economy, and our way of life.

The Clean Water Act has protected our health for more than 40 years—and helped our nation clean up hundreds of thousands of miles of polluted waterways to the benefit of communities and businesses. But in recent years, it's been badly in need of updating. Members of Congress, the Supreme Court, farmers, ranchers, small business owners, hunters, anglers, and the public have called on EPA and the Army to make a rule to clarify where the Clean Water Act applies.

Supreme Court cases in 2001 and 2006 put protection of 60 percent of our nation's streams and millions of acres of wetlands into question. At the same time, we understand much more today about how waters connect to each other. Scientists, water quality experts, and local water managers are better able than ever before to pinpoint the waters that impact our health and the environment the most.

Every lake and every river depends on the streams and wetlands that feed it—and we can't have healthy communities downstream without healthy headwaters upstream. We've had decades to improve our understanding of how waters connect—but a decade where the Clean Water Act hasn't kept up with the times. The Clean Water Rule will provide greater clarity and certainty to farmers, will not create any new permitting requirements, and will not add economic burden on agriculture.

The agencies did extensive outreach on the Clean Water Rule, hosting about 400 meetings across the country and receiving more than a million public comments. EPA officials visited farms in Arizona, Colorado, Maryland, Mississippi, Missouri, New York, Pennsylvania, Texas, and Vermont. Among the most crucial voices who weighed in during this process were our nation's original conservationists: our farmers, ranchers, and foresters.

Farmers have a crucial job to do: we depend on them for food, fiber, and fuel—and they depend on clean water for their livelihoods whether through livestock, crops, or irrigation. Normal farming and ranching—including planting, harvesting, and moving livestock—have long been exempt from Clean Water Act regulation, and the Clean Water Rule doesn't change that. It respects producers' crucial role in our economy and respects the law.

I'd like give a few more specifics on our final rule, starting with what it doesn't do.

- This rule doesn't protect any new kinds of waters that the Clean Water Act didn't historically cover. It doesn't regulate new types of ditches and doesn't apply to

groundwater or shallow subsurface flow. It does not cover tiles drains or change policy on irrigation or water transfers.

- The Clean Water Rule deals with the pollution and destruction of waterways—not land use or private property rights.
- Again, our rule doesn't touch long-standing Clean Water Act exemptions and exclusions for agriculture.

What the rule does is simple: it protects clean water, and it provides clarity on which waters are covered by the Clean Water Act so they can be protected from pollution and destruction.

Feedback from the agricultural community led us to define tributaries more clearly. The rule is precise about the streams being protected so that it can't be interpreted to pick up erosion in a farmer's field. The rule says a tributary must show physical features of flowing water to warrant protection.

We also got feedback that our definition of ditches was confusing. We're only interested in the ones that act like tributaries and could carry pollution downstream—so we changed the definition in the final rule to focus on tributaries. Constructed ditches that flow only when it rains are not jurisdictional.

And we have also provided certainty in how far safeguards extend to nearby waters. The rule sets limits on covering nearby waters that for the first time are physical and measurable. For example, an adjacent water is protected if it's within the 100-year floodplain but not beyond 1,500 feet from a covered waterway.

Agricultural producers work hard every day to feed America and the world. In this final rule, farmers and ranchers retain all of their Clean Water Act exemptions and exclusions—so they can continue to do their jobs, and continue to be conservation leaders.

We appreciate everyone's input on the Clean Water Rule. Learn more here WWW.EPA.GOV/CLEANWATERRULE and <http://www.army.mil/asacw>.