

## UPDATE ON RULEMAKING FOR CLEAN WATER ACT PROTECTION

Since 1972, the Clean Water Act has protected our health and environment by reducing the pollution in streams, lakes, rivers, wetlands and other waterways. These waters are used for drinking, swimming, fishing, farming, manufacturing, tourism and other activities essential to the American economy and quality of life. But over the past decade, interpretations of Supreme Court rulings have removed some critical waters from federal protection, and caused confusion about which waters and wetlands are protected. The result is less protection for some of the nation's streams, lakes and wetlands.

Last April, the U.S. Environmental Protection Agency and U.S. Army Corps of Engineers released draft guidance to clarify protection of waters through clearer, less burdensome guidelines for determining which water bodies are to be kept safe from pollution and destruction.

About 230,000 public comments were received on the draft guidance. More than 90 percent of the commenters expressed overall support for the proposed guidance recognizing its importance for assuring more consistent and effective protection for human health and water quality. A majority of commenters also asked that the agencies revise their regulations through a transparent, inclusive, public process to provide a needed opportunity to influence the scope of Clean Water Act protections under the law. Requests for a rule have come from Congress, industry organizations, environmental groups, states and the public. Even Supreme Court Justices have urged the agencies to proceed with a rulemaking because it would increase regulatory clarity, consistency, predictability and effectiveness.

Some commenters expressed concern about the potential effect of the guidance and rulemaking on the nation's economy. The agencies agree this is an important question and are committed to fully assessing the cost effects of guidance and rulemaking. The agencies will also be assessing the anticipated benefits of the guidance and rule for public health, the environment and for businesses that depend on clean water for their success.

The EPA and the Army Corps of Engineers have begun the process of proposing a rule to clarify the waters of the U.S. that are protected under the Clean Water Act. In developing the rule, the agencies are following all Administrative Procedures Act requirements and evaluating the impacts on all Clean Water Act programs. Outreach to small entities (including businesses, industries, and agriculture) and formal consultation with states, local governments and tribes is underway. Any proposed rule developed will undergo interagency review and then be released for public comment. EPA and the Army Corps are fully committed

to a rulemaking process that is transparent and inclusive of all stakeholders. The agencies anticipate proposing a rule for public comment in 2012.

The anticipated focus of the proposed rule is on protection of smaller waters that feed into larger ones, to keep downstream water safe from upstream pollutants. The focus will also be on reaffirming protection for wetlands that filter pollution and store water and help keep communities safe from floods.

A proposed rule would not extend federal protection to any waters not historically protected under the Clean Water Act and must be fully consistent with the law, including decisions of the Supreme Court. A proposed rule would also maintain all of the existing exemptions for agricultural activities. The proposed rule is expected to identify a number of specific types of water bodies that will not be subject to the Clean Water Act under this proposed rule – areas like artificial lakes and ponds, and many types of drainage and irrigation ditches.

With public participation and based on the best science, the agencies are confident that improved regulations will strengthen protection for clean water, human health and the environment, as well as benefit the economy and jobs.

Information about the draft guidance and proposed rulemaking can be found at <http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>