

FACT SHEET: 2023 Revised Definition of “Waters of the United States” Rule March 2023

In December 2022, the Environmental Protection Agency and the Army Corps of Engineers announced their final regulation identifying the water bodies that must be protected by the pollution control programs of the landmark Clean Water Act. This Clean Water Restoration Rule will officially take effect on March 20, 2023.

The Clean Water Act has several major pollution control, prevention, and cleanup programs, all of which are only triggered if the water body in question is considered a “water of the United States.” Consequently, what is considered a “water of the United States” directly impacts how effective the Clean Water Act will be at protecting our families and communities. As the architects of the law explained, Congress used that inclusive term in order to protect water bodies of all types and to control pollution at its source so that polluters, not downstream communities, bear the cost.



The Clean Water Restoration Rule does not significantly change current federal protections – it formalizes the framework the agencies have used for most of the past 15 years by incorporating longstanding policies into formal regulations. The rule also officially takes the Trump-era Navigable Waters Protection Rule, frequently called the “Dirty Water Rule,” off the books. The Dirty Water Rule has been invalidated by two federal courts and radically limited the government’s ability to protect waterways, excluding more than a

million miles of streams and tens of millions of acres of wetlands. Because the Biden administration’s rule formally reinstates the prior approach, we refer to it below as the Clean Water Restoration Rule.

What does the Clean Water Restoration Rule do?

The rule requires the protection of certain waters that have been fully protected by the law for virtually all of the last 50 years, namely navigable waters and interstate waters (core waters), tributaries to core waters with continuous flow for extended periods of the year, and wetlands connected to core waters or covered tributaries by a continuous surface connection. Even the Trump rule protected these categories of waters.

It also authorizes federal officials to protect some critical waters the illegal Trump rule called into question or excluded altogether, such as rain-dependent streams, wetlands nearby but

lacking a surface connection to protected waters, and many lakes and ponds. Importantly, not all of these waters will be protected – only those shown to have a material effect on downstream water quality in a core water will be covered. The rule is based in hydrological science.

Finally, the rule exempts from regulation several categories of features where water collects or flows. This includes many ditches, along with stock and irrigation ponds, and certain wetlands that had previously been converted to agricultural land. And the rule fully preserves existing permitting exclusions for agricultural activity; fewer than 1 percent of Army Corps' permits are for agricultural discharges.

Are the water bodies the Clean Water Restoration Rule allows to be protected important for water quality?

Absolutely yes. In 2015, EPA published a state-of-the-art review of the functions that various kinds of waters provide to downstream water bodies. This scientific survey relied on more than 1,200 peer-reviewed publications and definitively found that tributary streams, no matter the frequency or volume of flow, critically impact the water quality of downstream rivers and other waters. They reached the same conclusion for wetlands near tributaries. These tributaries and adjacent wetlands control flooding, filter pollutants, supply drinking water sources, and provide habitat for aquatic life. In developing the Restoration Rule, the agencies reviewed the previous report and newly-published scientific papers and reaffirmed their prior findings. That's why the new rule allows – but does not require – such water bodies to be protected by the Act's pollution control programs. By contrast, the Trump rule prevented many of those waters from being protected.

Does the Clean Water Restoration Rule affect the Trump administration's Navigable Waters Protection Rule?

Yes and no. Two courts struck down the Trump rule, invalidating it nationwide. So, that rule hasn't been enforced since the summer of 2021 and couldn't be enforced now, even if the Biden administration wanted to. The Restoration Rule formalizes the courts' decisions by taking the Trump rule off the books. And it does something very important in the process – it rejects calls from industry and their political allies to revive the Trump rule by analyzing the legal and policy basis for that rule and explaining why the rule's provisions excluding millions of miles of streams and most wetlands from the Clean Water Act would harm water quality and undermine Congress's purpose in enacting the law.