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EPA AND CORPS OF ENGINEERS PROPOSE MAJOR CHANGE TO POWER TO PROTECT STREAMS AND WETLANDS

On Tuesday, the United States Environmental Protection Agency and U.S. Army Corps of Engineers proposed regulations which would greatly expand what is called "Navigable Waters". Proposed changes would allow regulation of all flowing waters including temporary streams, known as intermittent streams, while proposing certain exemptions for agriculture.

In Pennsylvania, Adam Garber, Field Director with Penn Environment, a statewide environmental advocacy group, said the federal rule would restore protection for 49,000 miles of Pennsylvania's smallest streams, or 59% of the total stream miles in the state.

As another example, in Colorado, it is projected that 77,850 miles of waterways which are now considered temporary, are deemed to be at risk due to these federal regulations, because there is an underlying assumption that those developing land or operating businesses close to streams may not be able to control water quality impacts to waterways or wetlands.

Colorado's Governor warned that federal officials have proposed a rule change which "could impinge upon state authority and water management", and he called for better consultation with the States.

Under the proposed rules, upstream headwaters will have a much higher degree of federal protection, but waters with more uncertain downstream connections, such as "prairie potholes", which are located in the Midwest and farm ponds, are proposed to be evaluated on a case-by-case basis. Curiously, it is stated by EPA that the proposed rule does not expand Clean Water Act protections to any waters not historically covered by the Act.

The American Farm Bureau and land developers opposed the change, but there appears to be no disagreement among America's ranchers and farmers that clean water is critical to the ability to produce food and fiber for the nation.

Clean Water Action indicated that the proposed federal rule closes gaps in protection that affect approximately 20,000,000 acres of wetlands and half of the small streams in the United States.

Because of the agricultural exemptions, the proposal doesn't regulate agricultural tile drainage systems and water ditches. It continues and expands exemptions for 53 farm conservation practices that will not need permits or pre-approval by regulators.

The regulations now go out for public comment, and there will be a 90-day public comment period on the entire rule. The rule will be published shortly in the Federal Register.

The regulations will make it harder to get approval for new or expanded coal mines and surface mines throughout the United States. "Green Fields" development will be more difficult. Further, in locations where only steeper sloped areas remain to be developed, which typically have closely spaced small streams caused by topography, development will be harder in the future.

As the rulemaking goes forward through the regulatory process, it would not be surprising for Congress to get involved.

- Gary R. Brown

To access the rulemaking go to:
<http://water.epa.gov/lawsregs/guidance/wetlands/CWAwaters.cfm>

(Excerpts from the Pittsburgh Post Gazette, and Denver Post)



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