



PRESS RELEASE

Attorney General Frosh Joins Coalition Challenging Trump EPA's Illegal Delay of Clean Water Protections

BALTIMORE, MD (December 15, 2017) – Maryland Attorney General Brian E. Frosh today joined a coalition of 11 Attorneys General challenging the Trump Administration's proposed two-year suspension of the "Clean Water Rule," a federal regulation that defines "waters of the United States" under federal law. In [comments](#) addressed to the Environmental Protection Agency (EPA) and U.S. Army Corps of Engineers (ACOE), the coalition charges that the proposed suspension of the Clean Water Rule – which is designed to ensure the nation's lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act – would violate federal law.

As Oklahoma Attorney General, Administrator Pruitt had sued to halt the implementation of the Clean Water Rule. Since becoming EPA Administrator, he has refused to recuse himself from this rulemaking involving the very same issues. Pruitt has appeared in promotional videos for private organizations that have brought suit challenging the Clean Water Rule, and those ads, the coalition alleges, misstated the rule's provisions. The coalition charges that Pruitt's involvement in this rulemaking is "illegal." It states that the process "renders a final rule invalid" due to Pruitt's refusal to follow ethics review procedures and due to of his lack of impartiality.

"This proposed rule suspension would roll back years of progress in restoring the Chesapeake Bay and threaten our supply of clean drinking water," said Attorney General Frosh. "We will fight back against the relentless and illegal assault on critical environmental protections by President Trump and Administrator Pruitt."

A lake, river, stream, wetland, or any other kind of surface water is afforded protection under the Clean Water Act only if it is a "water of the United States." Supreme Court decisions in 2001 and 2006 led to substantial uncertainty as to whether some waters – particularly, small, seasonal, or rain-dependent streams, wetlands, and tributaries – are considered waters of the United States. As a result, roughly 20,000,000 wetland acres and 2,000,000 miles of streams in the Continental United States lost, or were placed in jeopardy of losing, their protections under the Clean Water Act. These at-risk streams help provide drinking water to 117 million Americans.

The decisions also potentially stripped 60 percent of our nation's streams and millions of acres of wetlands nationwide of federal protection. This left these waters – and the downstream waters with which they connect – vulnerable to increased flooding, pollution, damage to hunting and fishing habitat, and fouling of the drinking water supplies.

The 2015 Clean Water Rule clarified what types of waters are covered by the Clean Water Act. The Rule was based on over 1,200 peer-reviewed scientific studies that demonstrated how many waters are connected by networks of tributaries, intermittent streams, and wetlands. Because of this “interconnectivity,” physical, chemical, and biological pollution from wetlands and relatively small or infrequently-flowing upland streams often impact larger downstream waters, such as rivers, lakes, estuaries, and oceans. All of the lower 48 states have waters that are downstream of other states. Maryland is one of several states that is the recipient of water pollution generated not only within its borders, but also from upstream sources outside its borders over which it lacks jurisdiction.

On November 22, 2017, the EPA and ACOE proposed to suspend applicability of the Clean Water Rule for two years and reinstate old regulations – dating back to at least 1980 – that had been in place prior to the Clean Water Rule. It was these nearly 40-year-old rules, whose dated science and lack of clarity that had led to years of confusing and inconsistent interpretations by agencies and federal courts as to which waters are “waters of the United States.” If the suspension rule is finalized, the reinstated, outdated 1980 regulations would replace the Clean Water Rule.

In their comments, the coalition of Attorneys General state that EPA and ACOE are in “wholesale breach of foundational administrative law principles” and that the suspension rule is “in blatant violation” of federal law requirements, and is otherwise arbitrary, capricious, and exceeds the agencies’ legal authority. The coalition charges that, among other things, the agencies have:

- Failed to provide a meaningful opportunity for public comment on the substance of the suspension rule –allowing only a 21-day comment period during the Thanksgiving/Christmas holiday season, and specifically rejecting any comments on the content, basis, or impact of the reinstated four-decade-old regulations – demonstrating that the agencies “lack the required flexible and open-minded attitude” necessary for a proper rulemaking;
- Failed to consider important aspects of defining “waters of the United States,” including the “well-known ambiguities and inconsistencies that result from applying the 1980 regulations, and the further complications arising from Supreme Court and federal case law interpreting ‘water of the United States’,” and
- Disregarded the voluminous scientific basis and factual findings supporting the Clean Water Rule, including that the 1980 regulations do not specifically address the interconnectivity of waters and thereby leave many floodplains, wetlands, and tributaries without certain protection under the Clean Water Act.

The comments were filed by the Attorneys General of New York, California, Hawaii, Maine, Maryland, Massachusetts, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia.

On September 28th, Attorney General Frosh, along with the Attorneys General of California, Maine, Massachusetts, New York, Oregon, Vermont, Washington, and the District of Columbia, challenged the legality of a Trump Administration proposal to outright repeal the Clean Water Rule. The coalition charged that the proposal was “arbitrary and capricious and not in accordance with law.” They also charged that EPA Administrator Scott Pruitt’s involvement in

the effort, after suing to negate the Clean Water Rule as Oklahoma Attorney General, was “illegal” and would render any repeal invalid. [Click here to read these comments.](#)