



PRESS RELEASE

Attorney General Frosh Joins Coalition of Attorneys General Challenging Suspension of Clean Water Rule *Rollback of Clean Water Rule Violates Federal Law, Threatens To Undermine Decades of Clean Water Protections in MD and Across Country*

BALTIMORE, MD (February 6, 2018) – Maryland Attorney General Brian E. Frosh today joined a coalition of 11 Attorneys General in opposing the Environmental Protection Agency’s (EPA) suspension of the 2015 “Clean Water Rule” – a federal regulation designed to ensure the nation’s lakes, rivers, streams, and wetlands receive proper protection under the federal Clean Water Act. With its “Suspension Rule,” the Administration replaces the Clean Water Rule with confusing, nearly 40-year-old regulations that had been in place prior to the 2015 rule.

The Attorneys General charge that, in suspending the Clean Water Rule, the EPA and U.S. Army Corps of Engineers (Army Corps) violated federal law by taking action “with inadequate public notice, insufficient record support, and outside their statutory authority.”

“Maryland has sacrificed, worked and fought to save the Chesapeake Bay,” said Attorney General Frosh. “Suspension of the Clean Water Rule undermines decades of progress and threatens our supply of clean drinking water. This is another illegal assault on critical environmental protections by the EPA 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, and ambiguity in regulations dating back to 1980, 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, 60 percent of our nation’s streams plus millions of acres of wetlands nationwide either lost, or were placed in jeopardy of losing, their protections under the Clean Water Act. 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. Thousands of miles of streams are at-risk of losing protections under the Act, including those that feed sources of drinking water for 117 million.

In 2015, the EPA and the Army Corps adopted the Clean Water Rule to clarify what types of waters are covered by – and thereby are afforded protection under – the Clean Water Act. As the Attorneys General state in their suit, the 2015 Rule “rests on a massive factual record.” It was developed through an extensive multi-year public outreach process that elicited over one million

public comments, and was based on over 1,200 peer-reviewed scientific studies demonstrating how many waters are connected by networks of tributaries, intermittent streams, and wetlands. The Agencies also relied on EPA's Science Advisory Board's independent review of the Rule's scientific underpinnings.

Healthy wetlands and tributary streams are needed to protect the nation's waters. If these wetlands and waters are polluted or filled-in due to lax regulation, the physical, chemical, and biological integrity of larger downstream waters – such as rivers, lakes, estuaries, and oceans – will suffer. 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.

In 2015, EPA estimated that implementing the 2015 rule would result in indirect, incremental annual net benefits of between \$339 to \$572 million across multiple Clean Water Act programs.

The Suspension Rule, which the EPA and the Army Corps published today, suspends the Clean Water Rule for two years and replaces it with regulations dating back to at least the 1980s. It was these outdated regulations that had led to many years of confusing and inconsistent interpretations of “waters of the United States” by agencies and federal courts, and resulted in inadequate water quality protections.

In their suit challenging the Suspension Rule, the coalition of Attorneys General charges that, among other things, the EPA and Army Corps:

- Do not have authority under the Clean Water Act to suspend the Clean Water Rule after its effective date has passed;
- Failed to provide a meaningful opportunity for public comment on the substance of the suspension rule, and specifically instructed the public not to comment substantively on the content, basis, or impact of the reinstated four-decade-old regulations; and,
- Disregarded the voluminous scientific basis and factual findings supporting the Clean Water Rule, including that the 1980s 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.

In December 2017, a coalition of Attorneys General that submitted [comments](#) to the EPA and Army Corps pointing out the illegality of, and the harms threatened by, the then-proposed Suspension Rule. Previously, in September 2017, a coalition of Attorneys General in [comments](#) challenging the legality of the Trump Administration's proposal to outright repeal the Clean Water Rule.

The lawsuit is led by New York Attorney General Eric Schneiderman and filed by the 11 Attorneys General of New York, California, Connecticut, Maryland, Massachusetts, New Jersey, Oregon, Rhode Island, Vermont, Washington, and the District of Columbia. It was filed in U.S. District Court for the Southern District of New York.