



Weakening the Clean Water Act: What it Means for Pennsylvania

What happened to the Clean Water Act?

Millions of acres of wetlands and thousands of miles of streams are losing Clean Water Act (CWA) protections in the wake of Supreme Court decisions in 2001 (*SWANCC*) and 2006 (*Rapanos*) and subsequent Corps of Engineers and EPA guidance.

Without intervention from Congress or the Administration to restore Clean Water Act protections for waters that were protected prior to 2001, these waters will continue to be polluted and destroyed.

Recent storms, floods, wildfires, and droughts offer one clear lesson: we must protect our natural water supplies and water infrastructure. Healthy streams and wetlands are vital, they:

- Naturally filter and replenish our drinking water supplies
- Absorb flood waters and protect coastlines during heavy storms and hurricanes
- Recharge and release precious water supplies during times of drought
- Support diverse and abundant fish and wildlife
- Support local hunting, fishing, birdwatching, and boating industries
- Offer refuge and recreation close to home for people and wildlife alike.

These waters are all the more important in the face of climate change which will drastically alter the water cycle, leading to increased occurrences of flooding and drought, as well as sea level rise and increased storm intensity.

Waters at Risk due to *SWANCC* and *Rapanos* Supreme Court Decisions and Agency Guidance

- **Pennsylvania has lost over half of its wetlands since the 1780s.** Wetlands destruction continues in Pennsylvania despite the many benefits wetlands provide.
 - * Wetlands and streams store water, acting as sponges during flood periods, and flow reserves during drought. Wetlands can store up to 1.5 million gallons of water per acre. They help to keep Pennsylvania's rivers and lakes from flooding and minimize damage to downstream communities.
- Over 83,000 miles of streams and rivers run through Pennsylvania. More than half of these stream miles flow intermittently or are headwater streams with no other streams flowing into them. These headwater and intermittent streams make up the network of waterways that support the state's rivers and lakes; they are at high risk of losing federal protection.
- **Over 8 million people in Pennsylvania receive some of their drinking water from areas containing these smaller streams, according to the EPA.**



Ricketts Glenn State Park, Pennsylvania Dougtone, flickr

Wildlife, Hunting, and Fishing Impacts

- Pennsylvania streams and wetlands support a strong outdoor recreation economy. **In 2006, 4.7 million people participated in wildlife-related recreation in Pennsylvania, spending \$5.4 billion.** They spent almost \$1.3 billion on fishing-related recreation alone.
- Ninety percent of fish caught by American recreational anglers need wetlands for shelter, food supply, spawning, and nursery areas. Wetlands also provide the insect and smaller fish that serve as food for many larger game fish.
- Pennsylvania's headwater streams are crucial to the maintenance of fish populations. Sport fish such as Brook trout require very specific conditions for breeding and early development provided by Pennsylvania's coldwater streams. **With existing gaps in state law, any change to federal level stream protections could allow streams to be impacted by development and discharges of pollutants – changing water temperatures, increasing erosion and sedimentation, changing nutrient levels and lowering water quality.**

Wildlife, Hunting, and Fishing Impacts, contd.

- **Pennsylvania DNR reports that 29 fish species primarily inhabit swamps, bogs, floodplains, or lake and stream edges.** Ten are threatened or already extirpated.
- Many of Pennsylvania's wetlands could be at risk after SWANCC and Rapanos. Vernal pool wetlands are most at risk. These shallow, mostly-forested wetlands often dry up seasonally. They can range in size from 100 square feet to several acres, and they make excellent habitat for amphibians and reptiles. In Pennsylvania, species such as the Bog Turtle, the New Jersey Chorus Frog and the Coastal Plain Leopard Frog rely heavily on these wetlands. Loss of vernal pools could spell trouble for a variety of wildlife species.
- The endangered Eastern Mud Salamander depends on Pennsylvania vulnerable spring seeps and stream banks.



Nesting Bog Turtle, New Jersey Department of Environmental Protection

No Jurisdiction, Less Enforcement

- According to a February 2010 *New York Times* article, EPA regulators estimate that nationally “more than 1,500 major pollution investigations have been discontinued or shelved in the last four years” because of jurisdiction confusion stemming from the SWANCC and Rapanos decisions.
- **At least 1,876 polluting facilities are located on at-risk Pennsylvania streams.** Their pollution is currently limited by Clean Water Act permits that may no longer be required due to confusion over the Clean Water Act's jurisdiction.

Restoring Clean Water Act Protections will Streamline the Permitting Process

The SWANCC and Rapanos decisions and guidance have added uncertainty and burdensome fact-finding and paper work requirements to the Clean Water Act permitting process. The Corps of Engineers acknowledged in its 2011 budget justification that the complexity of these decisions “continues to increase the time it takes to provide landowners with decisions.”

State Protections in Pennsylvania

The reduction of Clean Water Act protections has not left Pennsylvania's wetlands and streams completely unprotected, but they do have less protection than previously under federal law. Pennsylvania's Clean Streams Law and Dam Safety and Encroachments Act, and accompanying regulations, provide broad authority to the Pennsylvania Department of Environmental Protection to regulate discharges of pollutants, including dredge and fill material, in all waters of the Commonwealth, including isolated wetlands, ponds, springs, ditches, and ephemeral and intermittent streams.

Unfortunately, Pennsylvania's program includes various exemptions that will leave important areas without protection, including encroachment activities in small watersheds. Similarly, permitting procedures and standards are relaxed for private residential construction in wetlands. “Mitigation” policies and practices are weaker than under Clean Water Act requirements, making it easier to develop in these areas.

Pennsylvania joined more than 30 states in asking the Supreme Court to uphold Clean Water Act protections for small tributaries and their adjacent wetlands.



Richard Seeley

The Administration Must Restore Clean Water Protections for the Nation's Waters

For almost a decade, Congress has failed to enact legislation restoring the historic scope of the Clean Water Act. **To protect the Nation's waters, EPA and the Corps of Engineers should revise their definition of “Waters of the United States” to restore and clarify Clean Water Act protections, including for so-called “isolated wetlands,” in a manner consistent with both law and science.** A successful rulemaking will restore and clarify protections for millions of wetland acres and stream miles, and will place these restored protections on a much more secure legal and scientific foundation.



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