

The More Things Change . . . The Most Recent Clean Water Act Confusion

Article By:

Jeffrey R. Porter

Just a few years ago, before the Trump Administration EPA revoked and replaced the Obama Administration EPA's regulations determining the reach of the Clean Water Act, the Obama Administration EPA regulations were the law in half of the United States and the Clean Water Act itself as it had been interpreted by various Federal Courts as well as by EPA and the Army Corps of Engineers in guidance memoranda, but not regulations, was the law in the other half of the United States.

Why did we not have one Federal law that applied from sea to shining sea? Because some but not all Federal Courts had struck down the Obama Administration EPA's regulations which remained effective except where Federal Judges had determined otherwise.

Today, we find ourselves on the way to the same situation. Two Federal Judges, in Arizona and New Mexico, have struck down the Trump Administration EPA's regulations. Other Federal Judges, including in my home state of Massachusetts, have not. And so, as one of the commenters in this *Bloomberg Environment* article notes, confusion reigns with the reach of the Federal law depending on whether you live in a state in which the Trump Administration EPA regulations have been struck down. If you do, the reach of the Clean Water Act is about the same as it was when the Obama Administration EPA regulations were struck down. If you don't, the Trump Administration EPA regulations are still the law.

Contrary to what a law professor at the University of California-Hastings is quoted as saying in the *Bloomberg Environment* article, there is no "Bush-era rule" to fall back on and regulations aren't repealed with a press statement. Where EPA's regulations have been struck down, there is only the statute to apply. Where EPA's regulations have not been struck down, they remain the law whether or not EPA chooses to follow it unless and until the Biden Administration EPA does to the Trump Administration EPA's regulations what the Trump Administration EPA did to the Obama Administration EPA's regulations and so on and so on and so on.

When will Congress give us a Clean Water Act that applies in all fifty states?

Other legal experts say there's no confusion at all, and that the Navigable Waters Protection Rule is, in fact, sidelined in every state. The Bush-era rule applies nationwide because the federal

government has said so, [said Dave Owen, a law professor at the University of California-Hastings](#).

©1994-2025 Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. All Rights Reserved.

National Law Review, Volume XI, Number 285

Source URL: <https://natlawreview.com/article/more-things-change-most-recent-clean-water-act-confusion-0>