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The EPA's Dirty Water: New Rule Discards Science, Ignores Importance of Wetlands and Tributaries

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Water, water everywhere and hardly a drop is being protected by the Trump administration. In its latest act of abdication, the Environmental Protection Agency published its Navigable Waters Protection Rule in the Federal Register on April 21. The rule is scheduled to go into effect June 22, completing the elimination of the Obama administration's Waters of the US Rule.

The original rule was designed to protect the majority of America's water based on hydrologic science, which clearly shows that water flows on many more surface and subsurface paths than just rivers and other obvious waterways. These many pathways in turn connect wetlands and tributaries with large lakes and wide rivers. Indeed, a 2015 EPA report that drew upon 1,200 peer-review studies found that all tributaries, even intermittent and ephemeral streams "are physically, chemically, and biologically connected to downstream rivers."

The Trump administration rejected this indisputable science in favor of an eyeball test. The new rule essentially says that if you cannot see the connection between bodies of water, it does not exist.

On that basis, the Trump administration removed environmental protections from half of the nation's wetlands and a fifth of streams and tributary headwaters. That makes them available for unregulated pollution from mine operators, chemical companies, fossil-fuel facilities, and pesticide-spewing factory farms. This is despite the fact that according to federal assessments, half of the nation's rivers and streams, a third of our wetlands, and a fifth of our coastal waters and Great Lakes waters are in "poor biological condition."

The EPA, run by former coal lobbyist **Andrew Wheeler**, made a mockery of the rule's public comment period by claiming to listen to a "wide range" of stakeholders in "robust public outreach." And yet the only "stakeholders" highlighted in EPA press releases were lobbyists for polluters, partisan Republicans, and right-wing think tanks that also happen to specialize in suppressing voter rights, renewable energy, and gun control. Groups behind Wheeler's rule include the American Petroleum Institute, the National Mining Association, the US Chamber of Commerce, the National Association of Manufacturers, the American Farm Bureau, the Heritage Foundation, and American Legislative Exchange Council.

To help out polluters, Wheeler arbitrarily eliminated consideration of most of the economic benefits and co-benefits of clean water.

The Obama administration calculated that up to $465 million in clean water compliance costs were outweighed by up to $572 million of benefits for recreational fishing, hunting,

flood control, and enforcement savings. New York University Law School's Institute for Policy Integrity estimated that the value of wetland mitigation under Obama's proposed protections was worth up to $1 billion. Indeed, by the Trump administration's own reports, fishing, hunting, birdwatching, and other recreation associated with wildlife annually pumps $157 billion into the economy.

None of that factored into Wheeler's dubious math, however, as he decided to ignore benefits and only focus on the purported costs to his industry cronies. But the problem is, the Clean Water Act doesn't say anything about costs and benefits. It says: make our waters clean. So, no matter how Wheeler might want to fiddle with the numbers, his rule is a license to pollute—a recipe for dirty water despite the law.

No science at the table

The blatant dismissal of the importance of clean water, from tap water to wildlife, caused scores of former federal scientists and environmental officials and the heads of virtually every major scientific society concerned with conservation to write Wheeler to emphatically protest the new rule. Wheeler did not listen to them or even to his own Science Advisory Board (SAB), which wrote Wheeler two months ago to say the agency did not incorporate the "best available science" to formulate Navigable Waters.

The SAB reminded Wheeler about the 2015 report emphasizing that "functional connectivity [in our water system] is more than a matter of surface geography." In blunt wording, the board said the EPA, "offers no comparable body of peer reviewed evidence, and no scientific justification for disregarding the connectivity of waters accepted by current hydrological science." By plowing ahead with a rule lacking scientific justification, the SAB said the EPA was "potentially introducing new risks to human and environmental health."

Already derelict in enforcement

In reality, the Trump administration's EPA has probably already introduced plenty of new risk into the water we drink and into the bodies of water we use for recreation. The day before the new rule was published, the Environmental Law and Policy Center (ELPC), a Chicago-based advocacy group focusing on natural resources in the Midwest, issued a report documenting a dramatic decline of state and federal clean water enforcement in the heavily-industrialized states sharing the Great Lakes.

The report quoted the Environmental Integrity Project's recent findings that state pollution control budgets in Wisconsin, Ohio, Illinois, and Indiana dropped between 16 percent and 36 percent between 2008 and 2018. The staff at the state level responsible for environmental protection in Illinois dropped from 1,028 employees to 639; in Michigan it fell from 1,568 to 1,228.

The ELPC, in its own data, says this these realities are compounded by the Trump administration's very public dismantling of the EPA, not to mention its recent suspension of environmental enforcement during the pandemic. Staffing in EPA's Region 5, responsible for Illinois, Wisconsin, Michigan, Ohio, Indiana, and Minnesota, has dropped 25 percent since 2011. Just as the EPA has fallen to its lowest national staffing levels since the Reagan administration in the 1980s, Nicole Cantello, an EPA lawyer who heads the union representing most EPA career staff in Region 5, said the numbers in her region are the lowest she knows of.

Correspondingly, enforcement cases under the Clean Water Act have plummeted from 340 case initiations and 351 case closures in 2012 during the mid-point of the Obama administration to 208 initiations and 205 closures last year. In the same time span the number of major facilities in serious noncompliance with the Clean Water Act have nearly doubled, from 122 to 211 (not including Michigan because of recording problems). Yet penalties and industry compliance costs assessed by the EPA have dropped dramatically.

Cantello said the loss of enforcement staff is particularly devastating because it takes many months of training and experience "to know a violation when you see it." Plus, many staff members who have remained at the EPA have found themselves subject to a reorganization that has often taken inspection and enforcement powers away from seasoned investigators. As one defanged EPA veteran told me for the American Prospect Magazine last year, she felt like a like "a glamorized customer service worker—for industry."

Worse still, Trump appointees throughout the EPA have turned even the process of documenting violations into a morass. Overall EPA inspections in Region 5 have dropped by 80 percent, from 4,706 in 2012 to 840 last year according to Better Government Association, an Illinois non-partisan watchdog group.

The critical veins of water systems

> "One reason the EPA made a lot of progress in cleanups over the years was because we could go after polluters big and small," Cantello said. "We used to be able to go inspect a site and file a violation. Now, the process creates weeks of delays and makes it so you're only going for the cases that are way over the bar on pollution. You're not as likely to pursue garden variety cases, even though small cases can still add up to lots of pollution."

For Loreen Targos, "garden variety" translates into tributaries, canals, groundwater, and wetlands that play a role in a Great Lakes system containing 84 percent of North America's surface fresh water and 21 percent of the surface fresh water on Earth. She knows this intimately as a Great Lakes remediation officer who has worked on major oil cleanups and who is also a Region 5 union steward.

She rattled off several places throughout the Midwest where pollution does not simply billow straight out from a lakeshore, but instead is found more inland from active and defunct industries that leave a toxic soup in channels, creeks, and estuaries. "These are the little veins that funnel into the lakes," Targos said. "We can't stop protecting them. If you listen to the president, it's like, we don't know where groundwater goes so we can't do anything about it. But we have decades of watershed science that does tell us where it goes, even if you don't see it."

With just two months remaining before the rule goes into effect, and lawsuits on the way from environmental groups, it is likely that actual implementation of the Navigable Waters Rule will depend on who wins the November presidential election. The decline of EPA enforcement that has already occurred should serve as a harbinger of what is to come if this new rule dictates which water the government chooses to protect. In the end, the science is clear: toxins in the veins can still poison the heart of our water systems.

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