



Insight

Protecting U.S. Waterways from the EPA

KIMBERLY VANWYHE | NOVEMBER 3, 2015

Today, the Senate will begin floor debate to overturn the [Waters of the U.S. \(WOTUS\) rulemaking by the Environmental Protection Agency \(EPA\)](#). Leading the charge is Senator Barrasso who authored the Federal Water Quality Protection Act ([S.1140](#)). The bill directs the EPA and Army Corps of Engineers to issue a revised WOTUS rule that does not include terms such as “isolated ponds, ditches, agriculture water, storm water, groundwater, floodwater, municipal water supply systems, wastewater management systems, and streams without enough flow to carry pollutants to navigable waters.” The bill is intended to protect private landowners from significant and unnecessary federal overreach.

Despite S.1140’s bipartisan support from co-sponsors, it is rumored the bill will be vetoed by the administration, if passed. However, it is also possible that should that occur the Senate will invoke the rarely used [Congressional Review Act \(CRA\)](#) to stop the WOTUS rule. The Act gives Congress the authority to review major rules issued by federal agencies.

Redefining logic

The controversial water pollution rule embodies the EPA expanding the term “navigable waters”; those that fall under the purview of the [Clean Water Act \(CWA\)](#). Under current definitions, the EPA has the authority to unilaterally enact regulation on bodies of water on private property, particularly ones utilized by ranchers and farmers to facilitate their needs such as ponds, ditches, and irrigation. Basically the EPA will have authority over your backyard.

Previous Action

In May, the House voted to pass a similar bill, [H.R. 1732](#), the “Regulatory Protection Act” which is currently awaiting Senate approval. In April, [S.980](#) was introduced by Senators Paul, Cruz and Rubio entitled the “Defense of Environment and Property Act of 2015.” Both bills are currently stalled in the Senate and presumably have the same veto fate as S.1140.

EPA Overreach

If the scope of this rule is not changed it will create tremendous burdens on small businesses, as they will be barred from basic acts including digging, excavating or even laying gravel. According to the [National Federation of Independent Business](#), special permits may be obtained for these projects, but they are extremely expensive and time consuming.

The average cost for a CWA permit since 2002 is \$270,000 and are not always granted. Additionally, penalties for [violations of the CWA](#) can cost up to \$37,500[1] a day, which amounts to \$262,500 a week or \$1,050,000 a month, all for laying gravel. The penalty does not match the infraction.

The EPA needs to scale back their efforts, instead of spreading themselves so thin that they cannot be effective. We have seen the consequences of EPA overreach too many times, and it is clear that their reach has outgrown their purview.

[1] <http://smallbiztrends.com/2015/06/epa-overreach-new-rule-seriously-affect-business.html>