



H.R. 2018: A Brazen Attack on Clean Water

H.R. 2018, The Clean Water Cooperative Federalism Act of 2011, is one of the most brazen attempts to roll back the Clean Water Act we've seen since it was signed into law in 1972.

H.R. 2018 would actually dismantle the cooperative federalism vision of the Clean Water Act. The bill would limit the federal government's ability to oversee state compliance with the Act, give upstream states the power to weaken their pollution protections; and weaken the power of downstream states to protect their water supply, their communities, and their economy. If passed, H.R. 2018 would threaten water quality in our nation's rivers, lakes and streams and limit the ability of both federal and state governments to ensure that all Americans have access to clean water.

The bill does this by attacking two fundamental elements of the Clean Water Act: Water Quality Standards and the Dredge and Fill permit process.

State Water Quality Standards

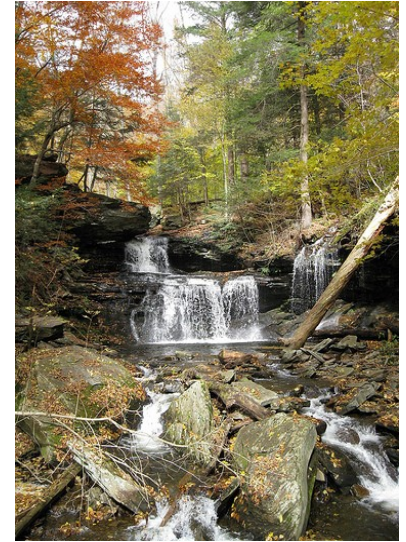
Water quality standards are aimed at translating the broad goals of the Clean Water Act into waterbody-specific objectives. Based on a cooperative federalism framework, the Clean Water Act provides uniform national standards that provide a level playing field from state to state, but delegates to the states the authority and responsibility to define the goals, standards and pollution limits for all waters within their jurisdiction in a manner that is at least as protective as the federal baseline. These state water quality standards then drive the pollution limits in water quality-based pollution permits, and determine which waters need protection and which need to be restored.

In states where water quality standards are strong, **water quality standards act as a powerful force for pollution prevention and water quality improvement.** In states where water quality standards are weak, they may offer little or no defense at all, threatening water quality, public health, and public infrastructure in communities and states downstream. In these states, activities that degrade water quality may be perfectly legal.

As on-the-ground conditions change and our scientific understanding of aquatic ecosystems improves, it is often necessary to update and amend these water quality standards to ensure that rivers, lakes and streams continue to maintain and improve in water quality in the face of increasing water quality threats due to sprawling development, altered hydrology and increased pollutant loading.

H.R. 2018 would curtail the federal government's ability to oversee and direct state revisions to their Water Quality Standards and discharge permits that are necessary to meet the minimum clean water standards of the Clean Water Act. In effect, the bill would return our nation to the failed state-by-state, race to the bottom, water pollution programs of the mid 20th Century that the Clean Water Act was intended to correct. **Specifically, H.R. 2018 would:**

- Restrict EPA's ability to revise an existing water quality standard or promulgate a new one, unless the state concurs.
- Prohibit EPA from rejecting a water quality certification granted by a state.
- Prohibit EPA from withdrawing approval of a state water quality permitting program (National Pollutant Discharge Elimination System), or from limiting federal financial assistance for the state program if a state isn't in compliance with water quality standards.
- Prohibit EPA from objecting to a state's issuance of an NPDES permit that it believes doesn't comply with Water Quality Standards.



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Permits for Dredged or Fill Material

Section 404 of the Clean Water Act established a permitting program to limit discharges of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include dredging and filling for large scale mining, development, water resource projects (such as dams and levees), and infrastructure (such as highways and airports).

The basic premise of the program is that **dredge and fill activities destroy, degrade, and pollute the nation's waters**, and therefore a permit may not be issued for these discharges of dredged or fill material if:



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- (1) A practicable alternative exists that is less damaging to the aquatic environment;
- (2) The activity would violate certain laws, including water quality standards; or
- (3) The activity would cause or contribute to significant degradation of protected waters.

A permit applicant must first show that steps have been taken to avoid impacts to wetlands, streams and other aquatic resources; that potential impacts have been minimized; and that compensation will be provided for all remaining unavoidable impacts.

Fundamental to protecting the nation's waters is EPA's oversight of dredge and fill permits issued by the Army Corps of Engineers. **H.R. 2018 effectively guts this important oversight by rendering almost meaningless its EPA veto authority and its permit review.** The bill also effectively guts all environmental review of 404 permits by curtailing fish and wildlife agency review as well. **Specifically, H.R. 2018 would:**



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- Restrict EPA's ability to veto a Corps 404 permitting decision unless the state concurs with the veto.
- Allow a state to assume and administer only parts of the 404 permit program; under current law, states are required to assume the entire program or none of it.
- Limit the EPA, U.S Fish and Wildlife Service and other agencies to 30 days to submit environmental impact comments to the Corps on a proposed section 404 permit.

EPA's "404c veto" authority has been used only 13 times in the past 38 years, eight of which were under Republican Administrations. While used sparingly, **this authority is a critical safeguard against the most destructive and wasteful proposals.** These are projects that have "unacceptable adverse effect[s] on municipal water supplies, shellfish beds and fishery areas...,wildlife or recreational areas." Many of them would have cost taxpayers millions of dollars on wasteful and destructive public works projects.

EPA's "veto" has saved great rivers such as the **South Platte (CO), Ware Creek (VA), and the Big River (RI) from wasteful, fish habitat destroying project proposals.** It was also critical to stopping the Yazoo Pumps project which was supported by the State of Mississippi, but nonetheless would have damaged or destroyed more than 200,000 acres of wetlands in the Mississippi Delta.

For more information contact:



Jan Goldman-Carter
Wetlands and Water Resources Counsel
goldmancarterj@nwf.org
202-797-6894

Josh Saks
Senior Legislative Representative
saksj@nwf.org
202-797-6631

National Wildlife Federation • National Advocacy Center • 901 E Street NW, Suite 400 • Washington, DC 20004