



Healing Our Waters-Great Lakes Coalition

November 14, 2014

Water Docket, Environmental Protection Agency
Mail Code 2822T, 1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Attention: Docket ID No. EPA-HQ-OW-2011-0880

To whom it may concern:

On behalf of the Healing Our Waters-Great Lakes Coalition and our 51 nonprofit conservation organizations representing millions of concerned citizens in the Great Lakes region, we submit these comments in support of the proposed rule defining the scope of waters protected under the Clean Water Act.

The HOW Coalition believes that the proposed Clean Water Protection Rule is one of the many important steps to protect and restore our Great Lakes. We understand that the agencies have undertaken the authority granted to them by Congress under the Clean Water Act to legally clarify the statute's jurisdiction. Our coalition supports this rulemaking and this rule and urges the Environmental Protection Agency and the U.S. Army Corps of Engineers to finalize the rule quickly.

Clean Water Protections at Risk

For years the Clean Water Act protected all wetlands and streams, which was Congress' intent. Congress recognized the interconnectedness of U.S. waters when it passed the act in 1972. It clearly articulated its intent that the tributaries of navigable waters be protected when it stated in a January 1973 report: "Water moves in hydrologic cycles and it is essential that discharge of pollutants be controlled at the source."¹

Now many of the waters on which the Great Lakes depend are at increased risk and have been for nearly a decade-and-a-half. Supreme Court decisions in 2001 (*SWANCC vs. Army Corps of Engineers*) and 2006 (*Rapanos vs. United States*) and subsequent agency actions have created a confusing, time-consuming, and frustrating process for determining what waters are protected under the Clean Water Act and state laws. This threat in particular leaves intermittent and headwater streams vulnerable to pollution and adjacent wetlands open to be filled and destroyed. Half of the streams in Great Lakes states do not flow all year, putting them, and adjacent wetlands, at risk of increased pollution and destruction. Over 117 million Americans get their drinking water from surface waters, including nearly 37 million people in Minnesota, Wisconsin, Illinois, Indiana, Michigan, Ohio, Pennsylvania, and New York. More importantly, 83 percent of the population in Great Lakes states are dependent on public drinking water systems that rely in intermittent, ephemeral, and headwater streams (See Table 1).² In addition, according to the U.S. Fish and Wildlife Service, the rate of wetlands loss accelerated nationally by 140 percent from

¹ Congressional Research Service. 1973. "A Legislative History of the Water Pollution Control Act Amendments of 1972." Library of Congress, Washington, D.C. Volume 2, P. 77.

² U.S. Environmental Protection Agency. 2009. "Analysis of the Surface Drinking Water Provided By Intermittent, Ephemeral, and Headwater Streams in the U.S."

2004 to 2009, the years immediately after the Supreme Court rulings.³ The Great Lakes region has already lost 66 percent of their historic wetlands (See Figure 1).⁴

Our Great Lakes are Connected and Important

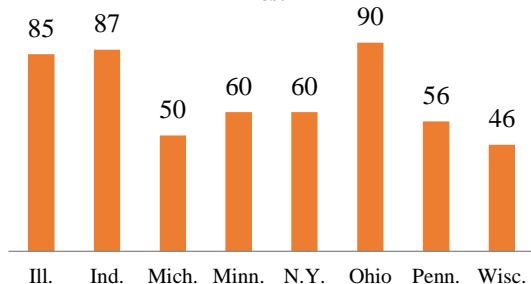
Protecting and restoring wetlands and streams is critical to the restoration and protection of the Great Lakes. According to a draft review of more than a thousand publications from peer-reviewed scientific literature conducted by an EPA Science Advisory Board, streams, tributaries (e.g., headwater, intermittent, ephemeral), and wetlands are clearly connected to downstream waters. The overwhelming science concludes that upstream waters in tributaries (intermittent, ephemeral, etc.) exert strong influence on the physical, biological, and chemical integrity of downstream waters. Common sense also tells us this is true. Pollution in a tributary is carried downriver into bigger and bigger waterways. Upstream waters also feed water to rivers and lakes, like the Great Lakes.

Additionally, other water features connected to rivers and lakes also play important roles. Healthy wetlands improve water quality by filtering polluted runoff from farm fields and city streets that otherwise would flow into rivers, streams, and water bodies across the country, including the Great Lakes. Wetlands and tributaries provide vital habitat to wildlife, waterfowl, and fish, reduce flooding, and replenish groundwater supplies. According to the SAB, all of this science provides an

State	Population Served by Public Drinking Water Systems using surface water ⁵	Population Dependent on Public Drinking Water Systems relying on I/E/H	% Population on Public Drinking Water Systems relying on I/E/H	Total Stream Miles in Source Protection Areas	Miles of I/E/H in SPAs	% of streams in SPAs that are I/E/H
Ill.	4,872,325	1,680,948	34%	9,894	5,688	57%
Ind.	1,951,112	1,703,230	87%	2,330	1,158	50%
Mich.	1,977,536	1,400,633	71%	1,342	551	41%
Minn.	1,068,598	978,928	92%	1,736	627	36%
N.Y.	11,471,432	11,146,815	97%	10,436	5,728	55%
Ohio	5,894,716	5,285,318	90%	11,605	6,978	60%
Penn.	8,215,216	8,035,216	98%	18,604	10,720	58%
Wisc.	1,392,700	391,531	28%	504	254	50%
Total	36,843,635	30,622,619	83%	56,453	31,703	56%

adequate basis for the key components of the proposed rule.

Figure 1: Percentage of Total Historic Wetlands Lost



A good example of how pollution upstream impacts bigger waters downstream is the recent drinking water crisis in Toledo, Ohio. Excess phosphorus and other pollutants washing off the land and impervious urban surfaces during heavy rains flow into the Maumee River, which empties into Lake Erie. Excess phosphorus mixes with a complicated brew of threats in the lake (like zebra and quagga mussels) driving the re-emergence of harmful algal blooms.⁶ The

³ Dahl, T.E. 2011. "Status and trends of wetlands in the conterminous United States 2004 to 2009." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 45.

⁴ Dahl, T.E. 1990. "Wetlands Losses in the United States 1780's to 1980's." U.S. Department of the Interior, Fish and Wildlife Service, Washington, D.C. P. 6.

⁵ All data found at:

http://water.epa.gov/lawsregs/guidance/wetlands/upload/2009_12_28_wetlands_science_surface_drinking_water_surface_drinking_water_results_state.pdf

⁶ According to the Ohio Lake Erie Phosphorus Task Force, "...there are multiple contributors to phosphorus into Lake Erie, but agriculture is the leading source [of phosphorus] due to the majority of land use in agriculture in the Maumee River...." See: Ohio Department of Agriculture,

blooms that shut off Toledo's drinking water produced deadly toxins harmful to human health requiring city officials to issue 'do not drink' orders. To protect drinking water systems like Toledo's, it is vital to protect the source of drinking water upstream, which the proposed rule does by covering streams and tributaries that play a vital role in keeping our waters clean and ensuring access to safe drinking water.

Clean Water Rule Supports Great Lakes Restoration Investments

Recognizing the important role wetlands and streams play in the overall health of the Great Lakes, the region's business, environmental and government leaders endorsed a plan that calls for the restoration of more than 1 million acres of wetlands.⁷ Over the last five years, the U.S. Congress and Obama Administration have invested more than \$1.6 billion to restore the Great Lakes. These efforts are producing results in communities around the region—including the restoration of more than 115,000 acres of wetlands and other habitat.⁸ The Clean Water Protection Rule will support Great Lakes restoration efforts and ensure that restoration gains are protected so that as we take one step forward we aren't also taking two steps back.

The clean water and restoration investments protected by the rule also support good-paying jobs and lay the foundation for long-term prosperity. Investments in Great Lakes restoration are creating jobs and leading to long-term economic benefits for the Great Lakes states and the country. A Brookings Institution report shows that every \$1 invested in Great Lakes restoration generates at least \$2 in return.⁹ Research from Grand Valley State University shows that the return for certain projects is closer to 6-to-1.¹⁰ The University of Michigan has also demonstrated that over 1.5 million jobs are connected to the Great Lakes, accounting for more than \$60 billion in wages annually.¹¹ Great Lakes businesses and individuals account for about 33 percent of the U.S. gross domestic product, according to a profile of Bureau of Economic Analysis data presented by World Business Chicago.¹²

The Clean Water Protection Rule helps protect our investment in restoring and protecting our Great Lakes by safeguarding vital wetlands and other waterways from pollution and/or destruction.

What the Proposed Rule Does and Does Not Do

In particular, the proposal provides clear and predictable protections for many streams, wetlands, and other waters that are currently vulnerable. The effect of this is to give greater certainty to the regulated community by providing better guidance from federal and state regulators. This helps streamline the permitting process. It does this in part by providing a clearer, scientifically supported definition of tributaries than in the past, saying that streams must have a defined bed, bank, and ordinary high water mark and flow to water already covered by the Act. The proposal reiterates existing exemptions for farming, forestry, mining and other land use activities, and very explicitly for the first time excludes many ditches, ponds, and other upland water features important for farming and forestry.

While the proposal covers waters that have historically been covered by the Clean Water Act, it does not extend this coverage to new types of waters that have not historically been under the Act's jurisdiction, such as groundwater. This means that the rule does not expand coverage to any new ditches. In fact, upland drainage ditches with less than perennial water flow are explicitly excluded. The rule also does

et.al. 2013. "Ohio Lake Erie Phosphorus Task Force II Final Report." P. 1. Members of this Task Force included the Ohio Department of Agriculture, Ohio Farm Bureau Federation, and Ohio Environmental Council, among others.

⁷ Great Lakes Regional Collaboration. 2005. "Strategy to Restore and Protect the Great Lakes." Found at: http://www.glrc.us/documents/strategy/GLRC_Strategy.pdf

⁸ U.S. Environmental Protection Agency. 2014. "Fiscal Year 15: Justification of Appropriation Estimates for the Committee on Appropriations." Washington, D.C. P. 267.

⁹ Austin, et.al. 2007. "Healthy Waters, Strong Economy: The Benefits of Restoring the Great Lakes Ecosystem." Metropolitan Policy Program, The Brookings Institution. Washington, D.C. 16 pp.

¹⁰ Isely, et.al. 2011. "Muskegon Lake Area of Concern Habitat Restoration Project: Socio-Economic Assessment." Grand Valley State University, Grand Rapids, Michigan. P. 23

¹¹ Michigan Sea Grant. 2011. "The Great Lakes: Vital to our Nation's Economy and Environment." University of Michigan. 2 pp.

¹² Found at: https://www.worldbusinesschicago.com/files/data/GLSL_Economy_2013%20%282011%20data%29.pdf

not cover any artificial lakes, ponds, and artificial ornamental waters in upland areas or water-filled depressions created as a result of construction activity. These areas are explicitly exempted by the rule. For the sake of clarity, the rule also restates that agricultural practices are exempt under current law. The most common farming and ranching practices, including plowing, cultivating, seeding, minor drainage, harvesting for the production of food, fiber and forest products, are exempt under the CWA and that exemption is reiterated in the proposal.

Conclusion

The HOW Coalition strongly supports this rulemaking and the proposed rule. The Great Lakes region cannot protect the Great Lakes alone. They need the help from the Clean Water Act to ensure all Great Lakes rivers, streams, and wetlands can provide clean drinking water, habitat for wildlife, and safe opportunities for fishing, paddling, and swimming. The proposed clarifications will provide just that support.

Please do not hesitate to contact Chad Lord, our coalition's policy director, at (202) 454-3385 or clord@npca.org with questions.

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