

Things to know: EPA water rules take effect in some states

WASHINGTON (AP) — New federal rules to protect smaller streams, tributaries and wetlands took effect on Friday — but only in some states.

A federal court ruling Thursday, hours before the rules were to go into effect, blocked the regulations in 13 states including Idaho. Those states had sued the Environmental Protection Agency and the U.S. Army Corps of Engineers, arguing that the rules are federal overreach and could be costly and confusing for landowners.

The government says the new rules will help protect the nation's waters from pollution and development, and safeguard drinking water for 117 million Americans.

Things to know about the new rules and court action blocking them:

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EPA SAYS RULES ARE NEEDED

The regulations issued by the Environmental Protection Agency and the U.S. Army Corps of Engineers in May aim to clarify which smaller waterways fall under federal protection after two Supreme Court rulings left the reach of the Clean Water Act uncertain. Those decisions in 2001 and 2006 left 60 percent of the nation's streams and millions of acres of wetlands without clear federal protection, according to EPA, causing confusion for landowners and government officials.

The new rules would force a permitting process only if a business or landowner took steps that would pollute or destroy the affected waters — those with a "direct and significant" connection to larger bodies of water downstream that are already protected. For example, that could include tributaries that show evidence of flowing water.

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STATES, FARMERS SAY THEY AREN'T

Despite the EPA's assurances, opponents fear a steady uptick in federal regulation of every stream and ditch on rural lands.

More than half of states have sued the EPA in hopes of delaying or blocking the rule. State officials from Georgia to New Mexico to Wisconsin have suggested the regulations could be harmful to farmers and landowners who might have to pay for extra permits or redesign their property to manage small bodies of water on their private land.

The federal ruling Thursday was in North Dakota, where officials from that state and 12 others argued the new guidelines are overly broad and infringe on their sovereignty. U.S. District Judge Ralph Erickson in Fargo agreed that they might have a case, issuing a temporary injunction.

The EPA said after the ruling that it would not implement the new rules in those 13 states — Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming.

Several other lawsuits remain, from other states and also from farm and business groups.

CONGRESS ALSO PUSHING BACK

In Congress, House Speaker John Boehner, R-Ohio, has called the rules "a raw and tyrannical power grab." The House has passed a bill that would block them — legislation the White House threatened to veto.

A Senate committee has passed a similar bill that would force the EPA to withdraw and rewrite the rules, and opponents are pushing the full Senate to act this fall.

The Senate bill has some bipartisan support. North Dakota Sen. Heidi Heitkamp and Indiana Sen. Joe Donnelly, both Democrats, have backed the legislation, saying the waters rule is a top issue they hear about from their agricultural constituents.

"It's the perfect example of the disconnect between Washington and rural areas," Donnelly said earlier this year.

EPA SAYS CRITICISM IS OVERBLOWN

Defending the rule in North Dakota, the government argued in court that the new rule clarifies some of the ambiguity in the law and actually makes it easier for the states to manage some waterways.

Government lawyers said during a hearing in Fargo last week that North Dakota's objection wrongly assumes some bodies of water will be affected. They also argued that the state is already going through some of the permitting procedures they're complaining about.

Since the rules were originally proposed last year, the EPA has been working to clear up some misconceptions, like some critics' assertions that average backyard puddles would be regulated. Farming practices currently exempted from the Clean Water Act — plowing, seeding and the movement of livestock, among other things — will continue to be exempted.

"We believe we have largely retained the status quo in terms of what a farmer would have to do under the current rule and the new rule," said Ken Kopocis, deputy assistant administrator of the EPA's Office of Water.

Judge rules Obama administration water rule should be halted

By JAMES MACPHERSON, Associated Press

BISMARCK, N.D. (AP) — A federal judge in North Dakota on Thursday blocked a new Obama administration rule that would give the federal government jurisdiction over some smaller waterways just hours before it was set to go into effect.

U.S. District Judge Ralph Erickson in Fargo issued a temporary injunction requested by North Dakota and 12 other states halting the U.S. Environmental Protection Agency and Army Corps of Engineers from regulating some small streams, tributaries and wetlands under the Clean Water Act. The rule, which has prompted fierce criticism from farmers among others, was scheduled to take effect Friday.

North Dakota Attorney General Wayne Stenehjem, who filed the injunction request, said his reading of the ruling was that it applied to all 50 states, not just the 13 that sued. But the EPA said in a statement that it applied only to the 13 and it would be enforced beginning Friday in all other states.

The 13 states exempted for now are Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota and Wyoming.

Erickson, who was appointed by President George W. Bush in 2003, said the EPA had exceeded its authority in issuing the regulation.

"The risk of irreparable harm to the states is both imminent and likely," Erickson said in granting the request from the 13 states. The judge said that among other things, the rule would require "jurisdictional studies" of every proposed natural gas, oil or water pipeline project in North Dakota, a state which is at the center of an energy exploration boom.

"While the exact amount of land that would be subject to the increase is hotly disputed, the agencies admit to an increase in control over those traditional state-regulated waters of between 2.84 to 4.65 percent," the judge wrote.

The 13 states say the regulation is unnecessary and infringes on their sovereignty. The federal government says the new rule clarifies ambiguity in the law and actually makes it easier for the states to manage some waterways

"This is a victory in the first skirmish, but it is only the first," North Dakota's Stenehjem said in a statement. "There is much more to do to prevent this widely unpopular rule from ever taking effect."

The agriculture industry has been particularly concerned about the regulation, saying that it could apply to drainage ditches on farmland. The EPA and Army Corps said the only ditches that would be covered under the rule are those that look, act and function like tributaries and carry pollution downstream. A tributary would be regulated if it shows evidence of flowing water such as a bank or high water mark, the EPA said.

The new rules would have forced landowners to get a permit if they took steps that would pollute or destroy the regulated waters connected to larger bodies of water downstream.

The judge said the rule appears to be too broad in some cases. He said the definition of tributary, for example, could include many waters that are unlikely to have a significant connection to larger waters downstream. He also said the rules are "arbitrary and capricious," and would cover some waters that are "remote and intermittent."

For example, the judge said Wyoming would have to bear the cost of issuing permits and has no way of avoiding the increased expenses under the regulation.

State officials in North Dakota said the new rule will cost the state millions of dollars and take away from more important programs.

Stenehjem — along with attorneys general and officials from 30 other states — wrote last month to the EPA and the Army Corps asking that the law be postponed at least nine months. Lawyers for the states said they heard nothing back from the government, so they filed a request for the preliminary injunction.

The federal government said the request for an injunction was better suited to be heard by the 6th U.S. Circuit Court of Appeals rather than a federal judge, but Erickson rejected that notion.

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