

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

SOUTH CAROLINA COASTAL)
CONSERVATION LEAGUE, et al.,)
)
Plaintiffs,)
)
v.)
)
E. SCOTT PRUITT, et al.,)
)
Defendants,)
)
and)
)
AMERICAN FARM BUREAU)
FEDERATION, et al.,)
)
Intervenor-Defendants.)
_____)

Case No. 2:18-cv-330-DCN

PLAINTIFFS’ MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rule of Civil Procedure 56 and Local Civil Rule 7.03, the plaintiff conservation groups in this action—South Carolina Coastal Conservation League, Charleston Waterkeeper, American Rivers, Chattahoochee Riverkeeper, Clean Water Action, Defenders of Wildlife, Friends of the Rappahannock, North Carolina Coastal Federation, and North Carolina Wildlife Federation—hereby move for summary judgment on all of their claims. See Fed. R. Civ. P. 56(a); Local Civ. Rule 7.03 (D.S.C.).

As explained in the accompanying memorandum, the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers flouted the fundamental requirements of the Administrative Procedure Act in adopting the regulation at issue in this case—a regulation that

stripped essential water-quality protections from wetlands and streams across the United States, including pocosins and Carolina bays. See Final Rule, Definition of “Waters of the U.S.”—Addition of an Applicability Date to 2015 Clean Water Rule, 83 Fed. Reg. 5,200 (Feb. 6, 2018). This Court should accordingly grant summary judgment to the plaintiff organizations and vacate the challenged rule. See Fed. R. Civ. P. 56(a) (providing that a “court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law”); 5 U.S.C. § 706(2)(A) (providing that a “reviewing court shall ... hold unlawful and set aside agency action, findings, and conclusions found to be ... arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law”). In support of this motion, plaintiffs state the following:

1. On February 6, 2018, defendants suspended implementation of the 2015 Clean Water Rule and protections provided by it, which the agencies previously found to “ensure protection for the nation’s public health and aquatic resources, and increase ... [the] predictability and consistency” of the nation’s water-quality programs by “clarifying the scope of ‘waters of the United States’ protected under the [Clean Water] Act.” Final Rule, Clean Water Rule: Definition of “Waters of the U.S.,” 80 Fed. Reg. 37,054 (June 29, 2015).

2. In their notice of the proposed Suspension Rule, the agencies directed the public not to comment on the loss of protections provided by the Clean Water Rule and omitted any analysis of that effect. Proposed Rule, Definition of “Waters of the U.S.”—Addition of an Applicability Date to 2015 Clean Water Rule, 82 Fed. Reg. 55,542, 55,544, 55,545 (Nov. 22, 2017).

3. The agencies did not address the substantive effect of the final Suspension Rule in their Federal Register notice of the rule.

4. Similarly, the agencies failed to publish or take comment on the pre-Clean Water Rule regulatory program they purportedly reinstated with the Suspension Rule. Id.

5. The Fourth Circuit Court of Appeals has held that when an agency “refus[es] to receive comments” on the merits of a proposed rulemaking, or to “consider or explain [the] relevant and significant issues” it raises, the agency “clearly” violates the fundamental requirements of the Administrative Procedure Act. N.C. Growers’ Ass’n, Inc. v. United Farm Workers, 702 F.3d 755, 770 (4th Cir. 2012) (internal quotations omitted).

6. Plaintiffs represent tens of thousands of members who regularly use, enjoy, and depend on waters that lose protection with the suspension of the Clean Water Rule. This motion is supported by the accompanying declarations of organizational representatives and members. See Fed. R. Civ. P. 56(c)(1)(A), (c)(4).

7. On behalf of those members and due to the agencies’ flagrant violation of the Administrative Procedure Act, plaintiffs respectfully request that the Court:

- a. Declare that the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers acted arbitrarily and unlawfully in promulgating the challenged rule, Definition of “Waters of the United States”—Addition of an Applicability Date to 2015 Clean Water Rule, 83 Fed. Reg. at 5,200;
- b. Vacate and set aside the challenged regulation;
- c. Award plaintiffs their reasonable fees, costs, and expenses, including attorneys’ fees, associated with this litigation; and
- d. Grant plaintiffs such further and additional relief as the Court may deem just and proper.

Respectfully submitted this 25th day of May, 2018.

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