

EPA and Department of the Army announce intent to redefine WOTUS rule

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On December 11, the Environmental Protection Agency (EPA) and the Department of the Army proposed a revised definition of the Waters of the United States (WOTUS) rule.

The WOTUS rule, also known as the Clean Water Rule, was first published in 2015 under the Obama administration to define “waters of the United States” that qualify for protection under the Clean Water Act of 1972. The 2015 rule did not establish any regulatory requirements, but it clarified the scope of federal authority for implementing the Clean Water Act to protect the nation’s water resources from pollution and destruction.

The proposed revision would limit where federal regulations apply and replace the 2015 WOTUS definition “with one that respects the limits of the Clean Water Act and provides states and landowners the certainty they need to manage their natural resources and grow local economies,” according to EPA Acting Administrator Andrew Wheeler.

The proposal clearly outlines what would be considered “waters of the United States,” including traditional navigable waters such as large rivers and lakes, tidal waters, and the territorial seas. It also outlines specific exclusions from the definition, such as ephemeral features, groundwater, many ditches, prior converted cropland, stormwater control features, and waste treatment systems.

A 2017 slideshow prepared by EPA and the U.S. Army Corps of Engineers (USACE) showed that at least 18 percent of streams and 51 percent of wetlands nationwide would no longer be protected under the newly-defined WOTUS rule.

The announcement follows President Donald Trump's February 2017 executive order requiring EPA and USACE to review the WOTUS rule and come up with a proposal for rescinding or revising the rule. The executive order directed federal courts to hold off on any ongoing litigation concerning implementation of the rule pending further administrative proceedings. Complex legal battles have erupted since the WOTUS rule was finalized in 2015 and continue to cause uncertainty regarding the legality of enforcing the rule across the country. A Supreme Court ruling on January 22, 2018, lifted the nationwide hold on implementing the WOTUS rule, which prompted the Trump administration to publish another rule in February 2018 that delayed the WOTUS rule’s applicability date until 2020, providing the EPA with more time to adjust its requirements.

The proposed revision will undergo a sixty-day comment period before EPA proceeds to finalize it. The new rule will almost certainly face challenges in court. States and environmental groups have already sued the Trump administration over its move to delay implementation of the original WOTUS rule, suggesting that legal action will ramp up as efforts to weaken the environmental regulation continue.

Sources: E&E News; National Association of Counties; U.S. Environmental Protection Agency; The White House.
