



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

Waters of the United States/Clean Water Act: U.S. Environmental Protection Agency/Corps of Engineers Announces Intent to Revise Trump Era Rule

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The United States Environmental Protection Agency and Department of the Army (collectively “EPA”) announced in a June 9th news release their intent to revise the Clean Water Act definition of waters of the United States (“WOTUS”) that had been promulgated during President Trump’s Administration.

The current WOTUS definition was promulgated in 2020 and denominated the Navigable Waters Protection Rule (“2020 Rule”). (See previous post [here](#).)

The 2020 Rule had previously rescinded an Obama-era revision/clarification of WOTUS.

The definition of WOTUS is arguably one of the three critical jurisdictional terms in the Clean Water Act. Its importance is magnified by the fact that it is also relevant to non-National Pollution Discharge Elimination System programs such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 Oil/Hazardous Substances Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

As a result, it is easy to understand why the scope of the definition of WOTUS has been the subject of frequent litigation, legislative oversight, rulemakings and public policy debates since the enactment of the modern version of the Clean Water Act in 1972.

The June 9th news release states that the interest in revising the definition of WOTUS is to:

... better protect our nation’s vital water resources that support public health, environmental protection, agricultural activity, and economic growth.

EPA Administrator Michael S. Regan is quoted as stating:

“We are committed to establishing a durable definition of ‘waters of the United States’ based on Supreme Court precedent and drawing from the lessons learned from the current and previous regulations, as well as input from a wide array of stakeholders, so we can better protect our nation’s waters, foster economic growth, and support thriving communities.”

EPA states that the 2020 Rule is “significantly reducing clean water protections.” It cites awareness of 333 projects that it states would have required Section 404 permitting prior to the 2020 Rule – but no longer do.

The United States Department of Justice is stated to be filing a motion requesting remand of the 2020 Rule.

EPA states that its “new regulatory effort” will be guided by the following considerations:

- Protecting water resources and our communities consistent with the Clean Water Act.
- The latest science and the effects of climate change on our waters.
- Emphasizing a rule with a practical implementation approach for state and Tribal partners.
- Reflecting the experience of and input received from landowners, the agricultural community that fuels and feeds the world, states, Tribes, local governments, community organizations, environmental groups, and disadvantaged communities with environmental justice concerns.

A copy of the news release can be found [here](#).