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# Waters of the United States/Clean Water Act: U.S. Environmental Protection Agency Issues Supplemental Proposed Rule

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The United States Environmental Protection Agency and the United States Department of the Army (collectively, “EPA”) issued a September 4th pre-public notice of a Supplemental Notice of Proposed Rulemaking (“Supplemental Proposed Rule”) which they describe as collecting:

... input on additional regulatory language for defining “waters of the United States” (“WOTUS”) to be considered alongside the 2025 proposed rule.

See EPA-HQ-OW-2025-0322; FRL 11132.1-04-OW.

The Supplemental Proposed Rule would supplement the proposed regulatory text in the November 20, 2025 Notice of Proposed Rulemaking, which proposes to revise the regulations defining the scope of waters federally covered under the Clean Water Act. See 90 Fed. Reg. 52498 (Nov. 20, 2025) (“2025 Proposed Rule”).

The definition of WOTUS is arguably one of the most critical jurisdictional terms in the Clean Water Act. Its importance is magnified since it is relevant to both National Pollutant Discharge Elimination System (“NPDES”) permitting and non-NPDES programs such as:

- Section 404 of the Clean Water Act wetland permits.
- Section 311 oil/hazardous substance release requirements.
- Clean Water Act Spill Prevention Control and Countermeasure regulations.

As a result, the definition of WOTUS has been and continues to be 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 Trump Administration has sought to narrow aspects of a Biden-era rulemaking addressing this definition in regard to a determination of *Sackett’s* outline of when adjacent wetlands are jurisdictional.

EPA in announcing the 2025 Proposed Rule stated that the intent of the revisions to the definition of WOTUS included:

- Amending the definition of WOTUS in light of the U.S. Supreme Court 2023 decision in *Sackett v. EPA*.
- Provide a greater regulatory certainty/predictability/consistency by clarifying the definition of WOTUS.

- Implement the overall objective of the Clean Water Act to restore and maintain the quality of the Nation's waters while respecting State and Tribal authority over their own land and water resources.

Comments by industrial trade associations and environmental organizations included responses which were highly positive and highly negative, respectively.

EPA states that in regard to the 2025 Proposed Rule that it received approximately 220,000 public comments. The federal agencies state that they are now seeking additional input on the regulatory text for the following definitions:

- Relatively permanent.
- Continuous surface connection.
- Perennial.

Otherwise, EPA states that the other portions of the 2025 Proposed Rule are unchanged for purposes of the Supplemental Proposed Rule.

Key components of the Supplemental Proposed Rule include:

- Replace the 2025 Proposed Rule's reliance on a "wet season" test.
- Utilize what can be characterized as a more restrictive approach in which "relatively permanent" waters would typically be limited to perennial waters.
- Perennial waters are those defined as standing or continuously flowing year-round during ordinary conditions.
- Utilization of a changed "continuous surface connection" test for wetlands identifying perennial surface water connecting a wetland to a jurisdictional water.

A copy of the Supplemental Proposed Rule can be found [here](#).