



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

# Waters of the United States: US Environmental Protection Agency/Army Corps of Engineers' Proposal to Rescind/Recodify 2015 Rule

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The United States Environmental Protection Agency ("EPA") and Army Corps of Engineers yesterday proposed a rule to rescind and recodify the Obama era revision/clarification Clean Water Act Waters of the United States rule. See 80 Fed. Reg. 37054 for the 2015 revision/clarification rule.

The White House had issued on February 28 an Executive Order titled:

*"Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the "Waters of the United States" Rule"*

The definition of waters of the United States 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 Systems programs such as:

- Section 404 of the Clean Water Act Wetland Permits
- Section 311 Oil/Hazard Substance release requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

EPA in proposing the June 27 rule to rescind and recodify states that the action (when finalized) provides certainty in the interim, pending a second rule making which it states will involve a substantive re-evaluation of the definition. The federal agency also states that the proposed rule would be implemented in accordance with Supreme Court decisions, agency guidance and longstanding practice.

EPA also states that the proposed rule would recodify the identical regulatory text in place prior to the 2015 revision/clarification.

A link to the 42 page pre-publication Federal Register Notice can be found [here](#).