

Waters of the United States/Clean Water Act: Association of State Wetland Managers Comments on Jurisdictional Definition



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The Association of State Wetland Managers (“ASWM”) submitted November 28th comments on the Clean Water Act definition of “waters of the United States” (“WOTUS”).

The November 28th comments were submitted in response to the United States Environmental Protection Agency and United States Corps of Engineers (collectively “EPA”) August 28th Federal Register Notice discussing potential revisions to this definition.

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 Substance Release Requirements
- Clean Water Act Spill Prevention Control and Countermeasure Regulations

The EPA request for comments was pursuant to a Presidential Executive Order issued on February 28th addressing the WOTUS rule which had been issued during the Obama Administration. The Executive Order directed EPA to publish for notice and comment a proposed rule rescinding or revising the prior rule, as appropriate and consistent with law.

ASWM states that its primary concerns in regard to the WOTUS include:

- Continued federal protection of public waters that meet invaluable public needs and provide multiple ecological services in all states. The American public is increasingly concerned about water pollution as well as the availability of safe drinking water. This year Chapman University’s annual survey of “America’s Top Fears” included pollution of oceans, rivers, and lakes, and pollution of drinking water as two of the top five fears of Americans, out of a wide array of social issues. This is the first year that an environmental issue was included in the top ten public fears. Other public opinion polls and surveys mirror this concern.
- Recognition of the degree to which cooperative federalism currently aligns state and federal dredge and fill programs, effectively serves to streamline the permitting process in many states, thereby avoiding duplication of effort and coordinating multiple necessary authorizations for a wide array of public and private construction projects. Disruption of existing programs could have the unintended consequence of complicating approval processes.

- Expediting the return to a scientific, stable, and practical regulatory process by acknowledging the need for consistency with both the CWA and with all U.S. Supreme Court decisions interpreting the CWA definition of Waters of the U.S.

ASWM describes itself as representing states and tribes in promoting the sound management of wetlands and other waters.

A copy of the comments can be downloaded [here](#).