

Wetlands and other water could be endangered - New rules proposed for enforcing the Clean Water Act - WOTUS

The Environmental Protection Agency (EPA) and the Army Corps of Engineers (ACE) officially proposed a new definition of “Waters of the United States” (WOTUS) on Dec. 11, 2018. Its intent is to clarify which bodies of water are federally protected under the Clean Water Act (enacted 1972), whose purpose is “to restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” (33 U.S.C. 1251, Sec 101(a)).

From the EPA’s website: “The agencies’ proposed rule would provide clarity, predictability and consistency so that the regulated community can easily understand where the Clean Water Act applies—and where it does not. Under the agencies’ proposal, traditional navigable waters, tributaries to those waters, certain ditches, certain lakes and ponds, impoundments of jurisdictional waters, and wetlands adjacent to jurisdictional waters would be federally regulated. It also details what are not “waters of the United States,” such as features that only contain water during or in response to rainfall (e.g., ephemeral features); groundwater; many ditches, including most roadside or farm ditches; prior converted cropland; stormwater control features; and waste treatment systems.” **The important point here is the specific exclusion from Federal oversight of groundwater and “ephemeral” flows such as occur after a rainfall.**

One of the intentions of the Clean Water Act (CWA) is to shield wetlands and isolated waterways that serve as cleansers for pollution, buffers for stormwater and habitat for wildlife. **A FOIL request made by E&E News in 2017 uncovered a 2017 slideshow prepared by EPA and ACE staff which estimated that 51% of wetlands nationally would not be protected under this new definition of WOTUS.**<https://www.eenews.net/stories/1060109323> (used by permission).

Background

In May 2015 EPA released a new [rule](#) on the definition of “waters of the United States” (“WOTUS”) and the future enforcement of the act. The new rule greatly expanded EPA’s authority to regulate bodies of water and many agricultural and business groups immediately announced their opposition. Thirteen states filed suit against it, and on August 27 U.S. Chief District Judge for North Dakota [Ralph R. Erickson](#) issued a preliminary injunction blocking the regulation in those states. In a separate lawsuit, on October 9 a divided [Sixth Circuit appeals court](#) stayed the rule’s application nationwide. Congress then passed a [joint resolution](#) under the [Congressional Review Act](#) overturning the WOTUS rule, but President [Barack Obama](#) vetoed the measure. (see citation 1 below)

On February 28, 2017, President [Donald Trump](#) signed documents directing EPA and the Army Corps of Engineers to review and rewrite the Obama administration's "[Clean Water Rule](#)," which would clarify the WOTUS definition. The agencies were ordered to reassess the rule consistent with

promoting economic growth and minimizing regulatory uncertainty. In June 2017 EPA and ACE announced the proposed repeal of the 2015 rule and its replacement with a narrower definition of WOTUS. Following on that event, the following science societies issued a joint letter to EPA Administrator Pruitt opposing the new, narrower definition of WOTUS:

The American Fisheries Society • American Institute of Biological Sciences • Association for the Sciences of Limnology and Oceanography • Coastal and Estuarine Research Federation • Ecological Society of America • Freshwater Mollusk Conservation Society • International Association for Great Lakes Research • North American Lake Management Society • Phycological Society of America • Society for Ecological Restoration • Society for Freshwater Science • Society of Wetland Scientists

The Sixth Circuit appeals court stay was overturned on January 22, 2018 when the [Supreme Court](#) ruled unanimously that challenges to the 2015 rule must be filed in [United States district courts](#) EPA then formally suspended the 2015 regulation and announced plans to issue a new version later in 2018. (see citation 1 below)

The 2015 rule has been called illegal and a gross overreach of Federal authority. Environmental groups have called it a necessary regulatory protection due to harmful practices by construction companies, developers, farmers, food processors, mining operations and other types of companies where the states have failed to protect water resources. Agricultural interests in particular have been very vocal in their opposition, claiming that since preservation of water resources is in the best business interest of their operations, local authorities and the states are best equipped to monitor water issues in their own neighborhoods where no Federal oversight can possibly be as knowledgeable nor efficient.

You can make your opinion heard - the public comment period will be open soon. Stay posted!

1. Clean Water Act. In *Wikipedia, The Free Encyclopedia*. Retrieved 19:41, December 18, 2018, from https://en.wikipedia.org/w/index.php?title=Clean_Water_Act&oldid=871434264