

# Waters of the United States/Clean Water Act: U.S. Environmental Protection Agency/Corps of Engineers to Follow Pre-2015 Regulatory Requirements



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

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The United States Environmental Protection Agency and United States Corps of Engineers (collectively “EPA”) announced on September 3rd that they have halted implementation of the Navigable Waters Protection Rule (“NWPR”) and will interpret Waters of the United States (“WOTUS”):

. . . consistent with the pre-2015 regulatory regime until further notice.

EPA states that it is undertaking this action in light of the United States District Court for the District of Arizona’s August 30th Order vacating and remanding the Rule. See *Pasqua Yaqui Tribe, et al. v. United States Environmental Protection Agency, et al.*, No. CV-20-00266-TUC-RM.

EPA previously on June 9th announced its intent to revise the Clean Water Act definition of WOTUS that had previously been promulgated during President Trump’s Administration (i.e., the “NWPR”). However, the NWPR had remained in place while a new definition was being considered.

Judge Marquez in her August 30st decision in *Pasqua* required that it be remanded, stating:

The seriousness of the Agencies’ errors in enacting the NWPR, the likelihood that the Agencies will alter the NWPR’s definition of “waters of the United States,” and the possibility of serious harm if the NWPR remains in place upon remand, all weigh in favor of remand with vacatur.

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.

EPA states that in light of the remand it will work “expeditiously” to move forward with the rulemaking announced on June 9th (i.e., development of a new definition for WOTUS). Nevertheless, going forward EPA will interpret WOTUS consistent with the pre-2015 regulatory regime.

In light of the remand, a variety of documents that are apparently intended to convey the regulatory requirements and guidance documents that were utilized in following the pre-2015 interpretation of WOTUS are listed in the announcement.

A link to the announcement can be found [here](#) and the *Pasqua* decision [here](#).