

# Waters of the United States/Clean Water Act: Association of Clean Water Administrators Pre-Proposal Comments



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

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The Association of Clean Water Administrators (“ACWA”) submitted on September 9th what it describes as “pre-proposal” comments regarding the Clean Water Act definition of waters of the United States (“WOTUS”).

The comments are provided to the United States Environmental Protection Agency (“EPA”) and the United States Army Corps of Engineers (“Corps”) as the agencies have begun efforts to revise the definition of WOTUS.

EPA and the Corps announced their intent to revise the Clean Water Act definition on June 9th. The WOTUS definition developed during the Trump Administration was denominated the Navigable Water Protection Rule (“2020 Rule”). The 2020 Rule was recently rescinded by the EPA and Corps. The 2020 Rule had rescinded an Obama-era revision/clarification of WOTUS.

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, 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.

ACWA’s September 9th comments identify five recommendations:

1. respect the role of the states as co-regulators and provide early, continuous, and meaningful opportunities for dialogue and input as any new rule is developed;
2. respect and follow the science;
3. recognize the geographic, geologic, climatic, hydrologic and leadership diversity among states and craft a definition that provides clarity but also flexibility for state implementers;

4. prepare to provide the states, well in advance, with technical assistance, tools and trainings to assist with implementation of any revised definition; and
5. include a delayed effective date to give state partners ample time to revise state regulations and/or to develop new state policy to cover any changes in coverage as a result of the revised jurisdictional definition.

The state organization emphasizes what it considers their “unique and congressionally designated role under the CWA as co-regulators.”

A special request is that:

. . . At a minimum, we ask that EPA provide an early draft of regulatory text, or options with sufficient detail, for our members to give EPA useful and specific feedback on the proposal.

A copy of the September 9th comments can be downloaded [here](#).