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Waters of the U.S./Clean Water Act: U.S. Environmental Protection Agency/Corps of Engineers Notice of Intention to Review/Rescind/Revise Rule

Arkansas Environmental, Energy, and Water Law Blog

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The United States Environmental Protection Agency (“EPA”) and the United States Corps of Engineers (“Corps”) issued a “Notice of Intention to Review and Rescind or Revise the Clean Water Review” (“Notice”) on February 28th.

The Notice was signed by EPA Administrator E. Scott Pruitt.

The Notice will be co-signed by Douglas W. Lamont, Senior Official Performing the Duties of the Assistant Secretary of the Army for Civil Works for the EPA and Corps on March 1st.

The Notice is being issued pursuant to the Executive Order issued by the White House (described in an accompanying post today) that directed the EPA and Army to review and rescind or revise the 2015 rule that revised/clarified the scope of waters encompassed by the Clean Water Act. The rule addressed the Clean Water Act term “waters of the United States.”

The Notice is stated to represent EPA’s and the Corps’ intention to review the rule, and provide advance notice of a forthcoming proposed rulemaking consistent with the Executive Order. The agencies will:

. . .consider interpreting the term “navigable waters,” as defined in the CWA in a manner consistent with the opinion of Justice Scalia in *Rapanos*. It is important that stakeholders and the public at large have certainty as to how the CWA applies to their activities.

EPA and the Corps state in the Notice that:

Through new rulemaking, the EPA and the Army seek to provide greater clarity and regulatory certainty concerning the definition of “waters of the United States,” consistent with the principles outlined in the Executive Order and the agencies’ legal authority.

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