

# Waters of the U.S./Clean Water Act: U.S. Environmental Protection Agency/Corps of Engineers Federal Register Notice Proposing to Rescind 2015 Definition



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The United States Environmental Protection Agency and Corps of Engineers (collectively “agencies”) published a July 27th Federal Register Notice proposing to rescind the 2015 revisions to the Clean Water Act definition of “waters of the United States.” See 82 Fed. Reg. 34899.

The agencies propose to replace it with a recodification of the regulatory text that was in place prior to the 2015 revisions to the definition. See 80 Fed. Reg. 37854 for the 2015 revision/clarification of the rule.

The definition of waters of the United States is arguably one of the three critical jurisdictional terms of 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 agencies state that they are already operating pursuant to the pre-2015 revisions pursuant to a court’s stay of that rule. They note they are also guided by certain guidance documents (referencing the 2003, 2008 Guidance) and other non-rule memoranda. Also cited as guiding the agency in its interpretation of the definition are the:

. . . *SWANCC* and *Rapanos* Supreme Court decisions, applicable case law, and longstanding agency practice.

Exclusions from the definition of waters of the United States for prior converted cropland and waste treatment systems are retained. The preamble notes that the White House had issued on February 28th an Executive Order titled:

Presidential Executive Order on Restoring the Rule of Law, Federalism, and Economic Growth by Reviewing the “Waters of the United States” Rule

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