

Waters of the United States/Proposed Recodification of Pre-Existing Rules: Arkansas Commenters



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

10/12/2017

Thousands of comments have been submitted in regards to the United States Environmental Protection Agency and United States Army Corps of Engineers (collectively “Agencies”) July 27th, 2017 proposed rule titled:

- *Waters of the United States – Recodification of Pre-Existing Rules*

The proposed rule is found at 82 Fed. Reg. 34899.

The Agencies announced their intent in the proposed rule to rescind this 2015 rule which was issued during the Obama Administration that revised/clarified the scope of waters encompassed by the Clean Water Act. The final 2015 rule can be found at 80 Fed. Reg. 37054.

The 2015 final rule addressed the Clean Water Act definition of Waters of the United States (“WOTUS”). This definition is arguably one of the three critical jurisdictional terms in the Clean Water Act. The importance of the jurisdictional definition of WOTUS is magnified by the fact that it is also relevant to Non-National Pollution Discharge Elimination System federal 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’ July 27th proposed rule is issued in response to an Executive Order that was issued on February 28th by the White House titled:

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

The Agencies in the July 27th proposal have announced their intent to rescind the 2015 final rule and recodify or re-establish the pre-2015 rule definition of “WOTUS” and provide a rational basis for the actions. The proposal also conveys the Agencies’ intent to undertake a new rulemaking to propose a revised definition for WOTUS. In the interim period, the Agencies would use the pre-2015 definition of WOTUS.

Several Arkansas organizations have submitted comments on the proposal. Examples of these include:

- Agricultural Council of Arkansas
- Arkansas Valley Audubon Society
- Farm Credit Services of Western Arkansas

- Rogers Group, Inc.

[A copy of the comments filed by the above organizations can be found here.](#)