

# Waters of the United States: Environmental Groups Judicial Challenge to U.S. Environmental Protection Agency Suspension Rule



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The Southern Environmental Law Center, on behalf of a number of environmental organizations, filed a challenge in the United States District Court for the District of South Carolina to the United States Environmental Protection Agency (“EPA”) final rule titled:

*Definition of Waters of the U.S. – Addition of an Applicability Date to 2015 Clean Water Rule 83 Fed. Reg. 5200 (Feb. 6, 2018) (“Suspension Rule”)*

The Complaint for Declaratory and Injunctive Relief (“Complaint”) argues that the Suspension Rule is an arbitrary and unlawful attempt to suspend the protections of EPA’s revision of the definition of waters of the United States which was promulgated on June 29, 2015. See 80 Fed. Reg. 37054.

The 2015 rule addressed the Clean Water Act definition of waters of the United States. This definition is arguably one of the three critical jurisdictional terms of the Clean Water Act. It 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 Complaint provides the Plaintiffs’ perspective on the regulatory history of waters of the United States including various judicial decisions. The causes of actions challenging the Suspension Rule include:

- Violation of the Administrative Procedure Act – arbitrary and unlawful failure to provide a meaningful opportunity for public comment
- Violation of the Administrative Procedure Act – arbitrary and unlawful failure to consider and address the merits of the Suspension Rule
- Violation of the Administrative Procedure Act – arbitrary and unlawful failure to restore the text of the governing rules to the Code of Federal Regulations

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