

Executive Director's Report



Board of Directors Meeting
August 2, 2017



LEGAL ALERTS | JUL 27, 2017

EPA and Army Corps Propose Reinstating Longstanding WOTUS Definition

Step One in a Two-Step Process to Rescind and Revise the WOTUS Definition Pursuant to an Executive Order



Today, the U.S. Environmental Protection Agency and Army Corps of Engineers published a [proposed rule](#) that re-codifies a decades-old definition of “waters of the United States,” which are waterbodies that are subject to the Clean Water Act.

While a 2015 rule by the agencies (known as the Clean Water Rule) redefined WOTUS, that rule is currently held up in the federal courts. As a result, the Clean Water Act is currently being implemented pursuant to pre-2015 guidance documents issued by EPA in the wake of the 2006 Supreme Court decision in [Rapanos v. United States](#).

An Executive Order signed by President Trump on February 28 directed EPA to rescind the 2015 rule and consider issuing a new definition based on the late Justice Scalia’s opinion in the *Rapanos* case. The agencies are taking a two-step process to rescind and revise the WOTUS definition pursuant to the Executive Order. By rescinding the definition of WOTUS under the Clean Water Rule, the agencies are in the process of completing the first step. In step two, the agencies will engage in a notice-and-comment rulemaking to perform a substantive reevaluation of the WOTUS definition.

Public comments on the proposed rescission are due August 28.

For more information about today’s EPA action or the various iterations in the ongoing saga surrounding the WOTUS definition, contact the authors of this Legal Alert listed at right in the [Environmental Law & Natural Resources](#) practice group, or your [BB&K attorney](#).

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